

CLERK

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 603

JOHN C. CURRY, INDIVIDUALLY AND AS COMMISSIONER OF REVENUE OF THE STATE OF ALABAMA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, DUNN CONSTRUCTION COMPANY, INC., AND JOHN S. HODGSON AND COMPANY, PARTNERS DOING BUSINESS AS DUNN CONSTRUCTION COMPANY, INC., AND JOHN S. HODGSON AND COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED SEPTEMBER 11, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

SUPREME COURT OF THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

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[fol. 1]

[Caption omitted]

[fol. 2]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

**UNITED STATES OF AMERICA and DUNN CONSTRUCTION COMPANY, INC., and John S. Hodgson and Company, Partners
Doing Business as Dunn Construction Company, Inc.,
and John S. Hodgson and Company, Plaintiffs,**

v.

**John C. Curry, Individually and as Commissioner of
Revenue of the State of Alabama, Defendant**

PETITION FOR DECLARATORY JUDGMENT—Filed May 16, 1941

To the Honorable Judges of the Circuit Court of Montgomery County, Sitting in Equity:

Comes now the United States of America and Dunn Construction Company, Inc., and John S. Hodgson and Company, trading as Dunn Construction Company, Inc., and John S. Hodgson and Company, and file this their petition for a declaratory judgment and respectfully shows unto the Court as follows:

1. The plaintiff, the United States of America, is a corporation sovereign and body politic.

2. The plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, are a partnership consisting of Dunn Construction Company, Inc., a corporation organized and existing under the laws of the State of Delaware, and John S. Hodgson and Company, an Alabama partnership consisting of John S. Hodgson and Alcie J. Hodgson, both of the City of Birmingham in the State of Alabama.

3. The plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership consisting of Dunn Construction Company, Inc., and John S. Hodgson and Company, with their principal place of business at Anniston, in the State of Alabama, are and have been engaged for and on behalf of the United States as an agency and in-

strumentality of the United States in the construction of a complete tent camp, necessary buildings, temporary structures, utilities and appurtenances thereto for the United States of America at Camp McClellan, in the State of Alabama, under the provisions and requirements of the contract entered into by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, with the United States of America, a true and certified copy of which is attached hereto marked Exhibit "C" and prayed to be read as a [fol. 3] part hereof, said contract provides that the cost of performing and executing the same, including the purchase of all materials necessary therefor and the amount of any applicable and valid taxes, shall be assumed and borne by the plaintiff the United States of America and reimbursement therefor made by the United States of America to the plaintiffs Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid.

4. The defendant, the Honorable John C. Curry, is Commissioner of Revenue of the State of Alabama.

5. On May 8, 1941, the State Department of Revenue of the State of Alabama, as will appear from a copy of a minute entry of the State Department of Revenue, which is attached hereto marked Exhibit "A" and prayed to be read as a part hereof, determined pursuant to Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, and upon information in the possession of the State Department of Revenue that for the quarterly period beginning January 1, 1941, and ending March 31, 1941, the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, had made purchases of tangible personal property during the said quarterly period which it is alleged is subject to the tax imposed by Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, and computed and determined the amount of tax due by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, for the said period as follows:

Item 1. Total sales price of tangible personal property purchased by said Taxpayers outside of Alabama or in interstate commerce, for storage, use or consumption by said Taxpay-

ers in this State, upon which the seller has not collected from said Taxpayers the use tax (not including purchases of automotive vehicles) \$2,313.17

Item 4. Total amount remaining as measure of tax \$2,313.17

Item 5. Amount of tax (2% of Item 4) \$46.26

Item 6. Plus 10% penalty upon \$——. \$4.63

Item 7. Plus interest at the rate of $\frac{1}{2}$ of 1% per month, or fraction thereof, from the 20 day of April, 1941 to the 8 day of May, 1941, upon the tax as herein computed and determined \$.23

Item 8. Total tax, penalty, and interest thereon
due to the 8 day of May, 1941. \$51.12

[fol. 4] 6. Based upon such computation and determination the State Department of Revenue ordered, as will appear from the minute entry attached hereto as Exhibit "A", that the amount of tax determined be assessed against the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as and for the amount of tax due by them under the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, together with \$4.63 penalty thereon and interest upon the amount of said tax at the rate of $\frac{1}{2}$ of 1% per month or fraction thereof from the 20th day of April, 1941, and that written notice of the assessment be given to the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as required by the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96.

7. On May 8, 1941, the State Department of Revenue, by John C. Curry, Commissioner of Revenue, delivered to the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, a copy of the minute entry and assessment mentioned and described

and fully set out in the minute entry, a copy of which is attached hereto as Exhibit "A", at which time the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, acknowledged receipt of the copy of the assessment above mentioned and described and waived any further or other notice thereof.

8. On May 8, 1941, upon the demand of the State Department of Revenue, and of John C. Curry, Commissioner of Revenue, for the payment of tax so determined to be due and assessed against the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, in the sum of \$46.26, together with \$4.63 penalty and 23¢ interest from the 20th day of April, 1941, as assessed by the State Department of Revenue in the minute entry of the State Department of Revenue, a copy of which is attached hereto as Exhibit "A" and prayed to be read as a part hereof, the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, paid to the State Department of Revenue and John C. Curry, Commissioner of Revenue, the sum of \$51.12, being the sum of \$46.26, as fixed by the assessment of May 8, 1941, with a penalty of \$4.63 and interest thereon from April 20, 1941, in the amount of 23¢. Such payment was made by plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, and accepted by [fol. 5] the State Department of Revenue and John C. Curry, Commissioner of Revenue, under protest duly verified. A copy of such protest and acceptance thereof by the State Department of Revenue is attached hereto marked Exhibit "B" and made a part hereof as fully as if set out herein.

9. The tax so assessed by the State Department of Revenue and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, was assessed upon the sales price of tangible personal property purchased outside the State of Alabama consisting of roofing materials purchased by the plaintiff, the United States, or by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States and in connection with their

performance of their contract with the United States, a copy of which is attached hereto marked Exhibit "C" and prayed to be read as a part hereof as fully as if set out herein, and used or consumed by the United States through these plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States, in and about the construction by them for and on behalf of the United States of certain buildings, warehouses and other camp and military facilities under the plaintiffs', Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, contract with the United States at Camp McClellan near Anniston, Alabama. Plaintiffs' allege that the transactions and activities of the agents and instrumentalities of the United States entered into for and on behalf of the United States are immune from taxation by the State of Alabama under the constitution of the United States of America fully as much as are the transactions and activities of the United States itself, and further specifically allege that property purchased by the United States, its agencies and instrumentalities, and the storage use or other consumption of property by the United States, its agencies and instrumentalities are immune under the Constitution of the United States of America from the tax imposed by Act No. 67, General Acts of Alabama, Regular Session, 1939, p. 96.

10. The tax so assessed by the State Department of Revenue and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, was assessed upon the sales price of tangible personal property purchased by the plaintiff, the United States, or by the plaintiffs, Dunn Construction Company, [fol. 6] Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States, without the State of Alabama, but for and on behalf of the United States and delivered to the United States at Camp McClellan, Anniston, Alabama, and the plaintiffs allege tangible personal property so purchased by the United States through its agents or instrumentalities is exempt from the tax imposed by Act No. 67 of the General Acts of Alabama, Regular Session, 1939, under Subsection B of Section 3 of that Act.

11. The tax so assessed by the State Department of Revenue and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, was assessed upon the sales price of tangible personal property purchased outside the State of Alabama by the plaintiff, the United States or by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States but for and on behalf of the United States and delivered to the United States at Camp McClellan, Anniston, Alabama, which is within an area within the exclusive jurisdiction of the United States and the plaintiffs allege that such purchases and the storage, use or other consumption of such property are immune from taxation by the State of Alabama under the Constitution of the United States of America, and further allege that the State Department of Revenue is applying the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, to the storage, use or other consumption of the property so made by the United States or on its behalf by its agents and instrumentalities have applied the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, in a manner and with a result violative of the Constitution of the United States of America.

12. Plaintiffs allege that the purchase, storage, use or other consumption of the roofing material, above described, was by the plaintiffs, the United States of America, or by the plaintiffs, the Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States for and on behalf of the United States and was in fact the purchase, storage, use or other consumption by the United States, the taxation of which by the State of Alabama is taxation of the United — by the State of Alabama and violative of the Constitution of the United States of America.

[fol. 7] 13. Plaintiffs allege that Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, insofar as it applies to the storage, use or other consumption of property by the United States or by the agents and instrumentalities of the United States consummated or

entered into by them and for and on behalf of the United States is violative of the Constitution of the United States of America.

14. Plaintiffs allege that a controversy exists between the defendant and the plaintiffs as to whether the plaintiffs are exempt from taxation under Act No. 67 of the General Acts of Alabama, Regular Session 1939, p. 96, and immune from taxation by the State of Alabama under the Constitution of the United States of America and that such controversy exists not only with respect to tangible personal property which furnishes the basis for the assessment made by the State Department of Revenue for the period January 1, 1941, to March 31, 1941, but with respect to similar tangible personal property and other tax periods prescribed by Act No. 67 of the General Acts of Alabama, Regular Session, 1949, p. 96.

Wherefore, Premises Considered, the plaintiffs pray that this Court will take jurisdiction of this action, that the Honorable John C. Curry, Individually and as Commissioner of Revenue, be made a party defendant to this bill and that process issue to him hereunder in accordance with the rules and practice of this Court. And plaintiffs further pray that this Honorable Court will, upon hearing, render a declaratory judgment and decree determining that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, are not liable for the taxes assessed by the defendant and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, on May 8, 1941, and that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, are entitled to a refund of the tax paid by them, as aforesaid, together with the penalty and interest thereon as may be appropriate and which to this Honorable Court may seem meet.

Samuel O. Clark, Jr., Assistant Attorney General;
Thomas D. Samford, United States Attorney, Attorneys for Plaintiffs,

[fol. 8]

EXHIBIT "A" TO BILL

MINUTE ENTRY

Consumer's Use Tax Assessment

STATE OF ALABAMA

V.

DUNN CONSTRUCTION COMPANY, INC., and JOHN S. HODGSON
AND COMPANY, Taxpayers

Whereas, Dunn Construction Company, Inc., and John S. Hodgson and Company (hereinafter called Taxpayers) having neglected or refused to make a return as required by the Alabama Use Tax Act, approved February 28, 1939 (Act No. 67 of the General Acts of Alabama, Regular Session, 1939 p. 96), for the quarterly period beginning January 1, 1941, and ending March 31, 1941, showing the amount of the total sales price of tangible personal property purchased by the said Taxpayers, the storage, use, or consumption of which properly is subject to the tax imposed by said Act; and

Whereas, based upon information in its possession, and as authorized by said Act, the State Department of Revenue has estimated upon said information the amount of the total sales price of tangible personal property purchased by said Taxpayers so far as is known to the State Department of Revenue for said quarterly period, the storage, use, or consumption of which in this State is subject to the tax imposed by said Act, and based thereon has computed and determined the amount of said tax due thereon by said Taxpayers for said period, as follows:

Item 1. Total sales price of tangible personal property purchased by said Taxpayers outside of Alabama or in interstate commerce, for storage, use or consumption by said Taxpayers in this State, upon which the seller has not collected from said Taxpayers the use tax (not including purchases of automotive vehicles) \$2,313.17

Item 2. Deductions:

(a) Purchase price of tangible personal property for resale (included in Item 1) \$

(b) Purchases not subject to tax:

Gasolene, oil and grease.....	\$.....	
Item 3. Total deductions (Total of Item 2.....)	\$.....	
Item 4. Total amount remaining as measure of tax		\$2,313.17
Item 5. Amount of tax (2% of Item 4)	\$	46.26
[fol. 9] Item 6. Plus 10% penalty upon \$—	\$	4.63
Item 7. Plus interest at the rate of $\frac{1}{2}$ of 1% per month, or fraction thereof, from the 20 day of April, 1941, to the 8 day of May, 1941, upon the tax as herein computed and determined .....	\$	.23
Item 8. Total tax, penalty, and interest thereon due to the 8 day of May, 1941	\$	51.12

It is, Therefore, Ordered by the State Department of Revenue that Forty-six & 26/100 Dollars (\$46.26) be and it is hereby assessed against said Taxpayers as and for the amount of use tax due by them under the provisions of said Use Tax Act, together with Four & 63/100 Dollars (\$4.63) penalty thereon, and interest upon the amount of said tax at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) per month, or fraction thereof, from the 20 day of April, 1941; and that written notice of this assessment be given to said Taxpayers, as required by the provisions of said Act.

Dated this the 8 day of May, 1941.

State Department of Revenue, by (S.) John C. Curry,
Commissioner of Revenue. (S.) Julia Klinge,
Secretary. (Seal.)

We, the undersigned, hereby acknowledge receipt of a copy of the foregoing assessment, and waive any further or other notice thereof.

This the 8th day of May, 1941.

(S.) Dunn Const. Co., Inc., and John S. Hodgson &
Co., by (S.) John S. Hodgson, Partner.

EXHIBIT "B" TO BILL

PROTEST OF PAYMENT OF USE TAX

To the State Department of Revenue:

Comes now Dunn Construction Company, Incorporated, and John S. Hodgson and Company, a partnership, and pays herewith under protest the tax exacted of it by the

State Department of Revenue as use tax for the period beginning January 1, 1941 and ending March 31, 1941, in the amount of \$51.12 including penalties and interest as fixed by final assessment of the State Department of Revenue dated May 8, 1941, purporting to have been made under [fol. 10] authority of the provisions of the Alabama Use Tax Act, approved February 28, 1939 (General Acts, Regular Session 1939, p. 96); this payment being made under compulsion to avoid seizure and sale of the property of the taxpayer and with notice to the State Department of Revenue that the taxpayer intends to and will test the legality and validity of such assessment and the collection of this payment and will attempt to secure refund of such payment by appropriate legal proceedings.

The grounds of this protest are as follows:

1. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use or consumption of tangible personal property which is immune from taxation by the State of Alabama under the Constitution of the United States.

2. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use and consumption of tangible personal property of the United States by the United States, and such storage, use and consumption is solely by the United States and immune and except from taxation by the State of Alabama under the Constitution of the United States and the Statutes of Alabama.

2. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use and consumption of tangible personal property exempt from taxation under subsection (b) of Section III of Act No. 67 of the Legislature of Alabama, session of 1939 as approved February 28, 1939, as it appears in General Acts Alabama Regular and Special Session 1939 at page 96.

4. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use or consumption of property by the United States of property of the United States, the owner-

ship, storage, use and consumption of which is not subject to taxation by the State of Alabama under the Constitution of the United States and the Statutes of Alabama.

5. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use and consumption of personal property of the United States by an agent and instrumentality of the United States and immune from taxation under the Constitution of the United States and the Statutes of Alabama.

6. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use and consumption of tangible personal property, not occurring within the taxing jurisdiction of the State of Alabama.

[fol. 11] 7. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon the storage, use or consumption of tangible personal property of the United States by the United States which is immune from taxation by the State of Alabama.

8. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon or with respect to the storage, use or consumption of property purchased by the United States and stored, used or consumed by the United States all of which are immune from taxation by the State of Alabama under the Constitution of the United States and the Statutes of Alabama for the reason that said assessment was of or on account of storages, uses and consumption by the United States exclusively.

9. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment is made upon purchases, storages, uses and consumptions of personal property by the United States made by it through the protestants as its agent and instrumentality, whose purchases, storages, uses and consumptions were for and in behalf of the United States exclusively.

10. The assessment of May 8, 1941, above mentioned is illegal and void for the reason that said assessment and the use taxes exacted thereunder constitute a direct and unconstitutional burden upon the United States.

This 7th day of May, 1941.

Dunn Construction Co., Inc., and John S. Hodgson
and Company, by (S.) John S. Hodgson.

STATE OF ALABAMA,
Calhoun County:

Before me, the undersigned authority in and for said County, in said State, personally appeared John S. Hodgson, who, being by me first duly sworn, deposes and says that he is a member of the firm of John S. Hodgson and Company, which firm is a co-venturer with the Dunn Construction Company, Incorporated, which co-venture is known as Dunn Construction Co., Incorporated, and John S. Hodgson and Company and that such officer has authority to sign the foregoing protest of payment of use tax and to make this affidavit; that he is cognizant of the facts; that he has [fol. 12] read the foregoing protest and that the allegations of fact therein are true and correct.

(S.) John S. Hodgson.

Sworn to and subscribed before me this the 8th day of May, 1941. ———, Notary Public. (Seal.)

Service of the foregoing protest and payment made thereunder received and accepted this 8th day of May, 1941.

State Department of Revenue, by (S.) John C. Curry,
Commissioner of Revenue. .

[fol. 13]

UNITED STATES OF AMERICA

War Department

Washington, May 13, 1941.

I hereby certify that I am the custodian of the files of the office of The Quartermaster General, War Department, and that the attached Contract No. W 6119 qm-161, dated September 9, 1940, with Dunn Construction Company, Inc., and John S. Hodgson and Company for construction of a complete tent camp, including necessary buildings, temporary structures, utilities and appurtenances thereto, is a true copy of the contract in my custody in the Office of The Quartermaster General.

Agnes N. Kilmartin, Principal Clerk, Mail & Records
Branch, Office of The Quartermaster General.

I hereby certify that Agnes N. Kilmartin, who signed the foregoing certificate, is the Custodian of the files of the Office of the Quartermaster General, War Department, and that to her certification as such full faith and credit are and ought to be given.

In Testimony Whereof, I Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of the said Department, at the City of Washington, this 13th day of May, 1941.

Henry L. Stimson, Secretary of War, by F. M. Hoadlay, Assistant Chief Clerk. (Seal.)

[fol. 14]

EXHIBIT "C" TO BILL

Contract No. W 6119 qm-161.

O. I. No. 70-41.

Cost-Plus-A-Fixed-Fee Construction Contract

War Department

Contractor Dunn Construction Company, Inc., and John S. Hodgson and Company, Birmingham, Alabama.

Fixed-fee, \$128,865.00.

Contract for construction of a complete tent camp, including necessary buildings, temporary structures, utilities and appurtenances thereto.

Place Fort McClellan, Alabama.

Estimated cost of project, \$3,204,588.00.

Payments to be made by Finance Officer at Fort McClellan, Alabama.

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

QM 8047 P3-3211 A 0002.003-02.

(S.) M. B. Birdseye, Major, QMC.

This contract is authorized by the following laws:

Public No. 611—76th Congress, approved June 13, 1940.

Public No. 703—76th Congress, approved July 2, 1940.

This Contract, entered into this 9th day of September, 1940 by The United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and Dunn Construction Company, Inc., a corporation organized and existing under the laws of the State of Delaware, and John S. Hodgson and Company a partnership consisting of John S. Hodgson and Alcie J. Hodgson, both of the City of Birmingham in the State of Alabama, hereinafter called the Contractors, witnesseth that:

Whereas, the Government desires to have constructed a complete tent camp, including necessary buildings, temporary structures, utilities and appurtenances thereto at Fort McClellan, Alabama.

Whereas, the accomplishment of the above-described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations, the Secretary of War has directed that the Government enter into a cost-plus-a-fixed-fee contract with the Contractor for the accomplishment of the above-described work:

Now, Therefore, the parties hereto do mutually agree as follows:

Article I. Statement of work

1. The Contractor shall, in the shortest possible time, furnish the labor, materials, tools, machinery, equipment, facilities, supplies not furnished by the Government, and services, and do all things necessary for the completion of the following work: Construction of a complete tent camp, including necessary buildings, temporary structures, utilities and appurtenances thereto and comprising 76 mess halls, 4 officers' quarters, 12 administration buildings, 2 fire stations, Post Office, 1 telegraph and telephone office, 10 Post Exchanges, service club, 7 recreation buildings, 8 infirmaries, utility shop, 14 motor repair shops, 8 storehouses, 15 warehouses, 1 gasoline storage, incinerator, bakery and equipment, laundry and equipment, cold storage building, 81 lavatory buildings, stockade fence; also a hospital unit with equipment consisting of administration building, 4 nurses' quarters, 2 officers' quarters, 3 mess halls, 6 barracks, 2 clinics, 1 Physiotherapy building, 14 wards, 3 storehouses, morgue, covered walks, service roads

and heating plant; also floors, framing and screening for 3205 tents and 1 theatre tent; also the installation of general utilities consisting of electric service, railroad, roads and walks, sewer, telephone and telegraph and water; also the grading and clearing necessary for preparation of the camp site. In accordance with the drawings and specifications or instructions contained in appendix "A" hereto attached and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction, and instructions.

It is estimated that the total cost of the construction work covered by this contract will be approximately Three Million Two Hundred Four Thousand and Five Hundred Eighty-eight Dollars (\$3,204,588.00), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government within one and one-half ($1\frac{1}{2}$) months from the date of this contract. It is expressly understood, however, that the Contractor does not guarantee the correctness of either of these estimates. The estimated total cost set forth above is based upon a detailed estimate agreed to by both the Government and the Contractor, a copy of which is on file in the office of The Quartermaster General of the Army.

[fol. 16] In consideration for his undertaking under this contract the Contractor shall receive the following:

(a) Reimbursement for expenditures as provided in Article II.

(b) Rental for Contractor's equipment as provided in Article II.

(c) A fixed fee in the amount of One Hundred Twenty Eight Thousand Eight Hundred Sixty-five Dollars (\$128,865.00) which shall constitute complete compensation for the Contractor's services, including profit and all general overhead expenses.

2. The Contracting Officer, may at any time, by a written order and without notice to the sureties, make changes in or additions to the drawings and specifications, issue and additional instructions, require additional work, or direct the omission of work covered by the contract. If such changes cause a material increase or decrease in the amount or character of the work to be done under this contract, or in the time required for its performance an equitable ad-

justment of the amount of the fixed fee to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly. Any claim for adjustment under this article must be asserted within 10 days from the date the change is ordered: Provided, however, That the Contracting Officer, if he determines that the facts justify such action, may receive and consider, and, with the approval of the Chief of Branch, adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article XV hereof. But nothing provided in this article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

3. The title to all work, completed or in the course of construction, shall be in the Government. Likewise, upon delivery at the site of the work or at an approved storage site and upon inspection and acceptance in writing by the Contracting Officer, title to all materials, tools, machinery, equipment and supplies, for which the Contractor shall be entitled to be reimbursed under Article II, shall vest in the Government. These provisions as to title being vested in the Government shall not operate to relieve the Contractor from any duties imposed under the terms of this contract.

[fol. 17] 4. The work shall be executed in the best and most workmanlike manner by qualified, careful, and efficient workers, in strict conformity with the best standard practices.

5. Except it be otherwise authorized by the Contracting Officer, all materials shall be of the best quality of their respective kinds. If the Contracting Officer requires that the Contractor submit for prior approval samples of materials proposed for use in the work covered by this contract, the Contractor shall make no commitments for such materials until the submitted sample has been approved by the Contracting Officer.

Article II. Cost of the Work

Reimbursement for Contractor's Expenditures

1. The Contractor shall be reimbursed in the manner hereinafter described for such of his actual expenditures in the performance of the work as may be approved or ratified

by the Contracting Officer and as are included in the following items:

(a) All labor, material, tools, machinery, equipment, supplies, services, power and fuel necessary for either temporary or permanent use for the benefit of the work. All articles of machinery or equipment valued at \$300 or less shall be classed as tools and shall be charged directly to the work. Title thereto shall thereupon pass to the Government.

(b) All subcontracts made in accordance with the provisions of this agreement.

(c) Rental actually paid by the Contractor, at rates not to exceed those approved by the Contracting Officer, for construction plant in sound and workable condition, such as pumps, derricks, concrete mixers, boilers, clamshell or other buckets, electric motors, electric drills, electric hammers, electric hoists, mechanical shovels, locomotive cranes, power saws, engineers' levels and transits, and such other equipment exceeding \$300 in value as may be necessary for the proper and economical prosecution of the work. Each contract for the rental of construction plant or parts thereof by the Contractor from third parties shall be in a form prescribed by the Secretary of War, shall be subject to approval by the Contracting Officer, and shall contain the same provisions entitling the Government to acquire title to such plant or any part thereof upon the same conditions as those contained in paragraph 2 of Article II of this contract.

(d) Loading and unloading at the site of the work of construction plant, owned or rented by the Contractor; the [fol. 18] transportation thereof place or places where it is to be used in connection with said work, and return transportation f. o. b. cars to the point of original shipment or equivalent mileage, except as hereinafter set forth; the installation and dismantling thereof, and such repairs and spare parts as are not included in the rental; provided such repairs or spare parts are not made necessary by defects in such plant, or parts thereof, or by the fault or negligence of the Contractor or his employees; but charges for transportation of such construction plant over distances in excess

of 500 miles must have the written authorization of the Contracting Officer in advance.

(e) Transportation charges on materials and supplies.

(f) Transportation and traveling expenses to and from the work of the necessary field forces for the economical and successful prosecution of the work; expenses of procuring labor and expediting the production and transportation of material and equipment. Expenditures under these items must have the written authorization of the Contracting Officer in advance.

(g) Salaries of resident engineers, superintendents, timekeepers, foremen, and other field employees of the Contractor in connection with the work. In case the full time of any field employee of the Contractor is not applied to the work his salary shall be included in this item only in proportion to the actual time applied thereto. No person shall be assigned to service by the Contractor as superintendent of construction, chief engineer, chief purchasing agent, chief accountant, or similar position in the Contractor's field organization, or as principal assistant to any such person, until there has been submitted to and approved by the Contracting Officer a statement of the qualifications and experience of the person proposed for such assignment. The regular salary or compensation rate of any such person shall not be in excess of the highest salary or compensation rate received by him during the year preceding the date of this contract plus such increase as the Contracting Officer may approve.

(h) Temporary rights in land required in connection with the work.

(i) Buildings and equipment required for necessary field offices, commissary, hospital and other facilities and the cost of maintaining and operating said offices, hospital and other facilities, including minor expenses such as telegrams, telephone service, expressage, and postage. The cost of maintaining commissary buildings and utility service therein will be reimbursed but the cost of all commissary operating [fol. 19] personnel and supplies will be borne by the Contractor. All commissaries shall be operated as nearly as possible without profit or loss and shall be subject to such sanitary regulations as the Contracting Officer may prescribe.

(j) Premiums on such bonds and insurance policies as the Contracting Officer may require for the protection of the Government; the cost of all public liability, employer's liability, workmen's compensation, fidelity, fire, theft, burglary, and other insurance that the Contracting Officer may approve as reasonably necessary for the protection of the Contractor.

(k) Losses and expenses, not compensated by insurance or otherwise (including settlement made with the written consent of the Contracting Officer), actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer to be just and reasonable.

(l) The cost of reconstructing and replacing any of the work destroyed or damaged, and not covered by insurance, but expenditures under this item must have the written authorization of the Contracting Officer in advance.

(m) Payments from his own funds made by the Contractor under the Social Security Act, and any applicable State or local taxes, fees, or charges which the Contractor may be required on account of this contract to pay on or for any plant, equipment, process, organization, materials, supplies, or personnel; and, if approved in writing by the Contracting Officer in advance, permit and license fees, and royalties on patents used including those owned by the Contractor.

(n) Such portion of the transportation, traveling, and hotel expenses of officers, engineers, and other employees of the Contractor as is actually incurred in connection with this work. Expenditures under this item must have the written authorization of the Contracting Officer in advance.

(o) When specifically approved in advance by the Chief of Branch, a reasonable allowance for work done in the Contractor's general offices exclusively for and directly chargeable to the work.

(p) Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this paragraph.

(q) It is agreed that, unless otherwise authorized by the [fol. 20] Contracting Officer, all allowances as items of cost

on account of the work under this contract for travel expenses and subsistence provided for herein shall conform to the allowances authorized by the "Standardized Government Travel Regulations."

Rental for Contractor's Equipment

2. Rental shall be paid to the Contractor for such construction plant or parts thereof as he may own and furnish, at not to exceed the rates approved by the Contracting officer. Except as specified below, such rental shall begin on the date of the delivery of such plant, or parts thereof, to a common carrier for shipment to the site of the work, as evidenced by the bill of lading covering such shipment, and shall terminate, unless title thereto passes to the Government at an earlier date, on the date of the delivery of such plant, or parts thereof, to a common carrier for shipment from the site of the work, as evidenced by the bill of lading covering such shipment, provided such plant, or parts hereof, are so delivered without delay after notice by the Contracting Officer to the Contractor that such plant or parts thereof, are no longer required; otherwise, the rental shall terminate on the date of such notice. If such plant, or any part thereof, is not in sound and workable condition when it arrives at the site of the work, the rental period therefor shall not begin until such plant, or parts thereof, shall have been placed in sound and workable condition at the expense of the Contractor and no rental therefor shall be paid for any prior period. If such plant, or parts thereof, cannot be placed in sound and workable condition, no transportation charges for the shipment thereof shall be included in the cost of the work or paid, either directly or indirectly, by the Government. Determination as to whether such plant, or parts thereof, are in sound and workable condition shall, in every instance, be made by the Contracting Officer. Slight delays in the use of such plant, or parts thereof, caused by necessary minor or field repairs and replacements shall not interrupt the rental period, but no rental shall be paid for the period of any delay in the use of such plant, or parts thereof, caused by other than necessary minor or field repairs. When such construction plant or any part thereof shall arrive at the site of the work, the Contractor shall file with the Contracting Officer a schedule setting forth the fair valuation at that time of each part of such construction plant. Such valuation shall be deemed final unless the

Contracting Officer shall, within 10 days after the machinery has been set up and working, modify or change such valuation. When and if the total rental paid to the Contractor for any such part shall equal the valuation thereof, plus one per cent (1%) per month for each month or fraction thereof such part has been in use, no further rental therefor shall be paid to the Contractor, and title thereto shall vest in the Government. At the completion of the work or upon termination of the contract as provided in article VI, the Government may at its option purchase any part of such construction plant by paying to the Contractor the difference between the valuation of such part or parts, plus one per cent (1%) per month for each month or fraction thereof such part or parts have been in use and the total rentals theretofore paid for such part or parts.

General

3. The Government reserves the right to furnish any materials, construction equipment, machinery, or tools necessary for the completion of the work.

4. The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials, and supplies.

5. The Government reserves the right to pay directly to the persons concerned all sums due from the Contractor for labor, materials, or other charges.

6. Rates of rental as substitutes for scheduled rental rates may be agreed upon in writing between the Contractor and the Contracting Officer, such rates to be in conformity with similar rates of rental charged in the particular territory in which the work covered by this contract is to be performed. Such substitute rates shall be subject to the approval of the Chief of Branch, but shall be followed until so approved, at which time any necessary adjustments in prior payments will be made.

7. No salaries of the Contractor's executive officers, no part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expenses of any kind, except as specifically authorized in section 1 of this article, shall be included in the cost of the work; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

8. The Contractor shall, to the extent of his ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications, and when unable to take advantage of such benefits he shall promptly notify the Contracting Officer to that effect and the reason therefor. In determining the actual net cost of articles and materials [fol. 22] of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications which have accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

9. All revenue from the operations of the hospital or other facilities, except commissaries, or from rebates, discounts, refunds, etc., shall be accounted for by the Contractor and applied in reduction of the cost of the work.

Article III. Payments

Reimbursement for Cost

1. The Government will currently reimburse the Contractor for expenditures made in accordance with article II upon certification to and verification by the Contracting Officer of the original signed pay roll for labor, the original paid invoices for materials, or other original papers. Generally, reimbursement will be made weekly but may be made at more frequent intervals if the conditions so warrant.

Rental for Contractor's Equipment

2. Rental as provided in article II for such construction plant or parts thereof as the Contractor may own and furnish shall be paid monthly upon presentation of proper vouchers.

Payment of the Fixed-Fee

3. The fixed-fee prescribed in article I shall be compensation in full for the services of the Contractor, including profit and all general overhead expenses. Ninety per cent (90%) of said fixed-fee shall be paid as it accrues, in monthly installments based upon the percentage of the completion

of the work as determined from estimates made and approved by the Contracting Officer. Upon completion of the work and its final acceptance, any unpaid balance of the fee shall be paid to the Contractor. If the contract is terminated for the convenience of the Government, before completion, the Contractor will be paid that proportion of the prescribed fee which the work actually completed bears to the entire project, less fee payments previously made. If the contract is terminated due to the fault of the Contractor, no additional payments on account of the fee will be made.

[fol. 23]

Payments by Contractor

4. If bills for purchase of material, machinery or equipment or pay rolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not promptly paid by the Contractor or subcontractor as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor any amount equivalent to the amount of any such bill or pay roll. Should the Contractor neglect or refuse to pay such bills or pay rolls or to direct any subcontractor to pay such bills or pay rolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or pay rolls directly, in such event a deduction equal to five per cent (5%) of the amount so paid directly shall be made from the Contractor's fee.

Final Payment

5. Upon completion of the work and its final acceptance in writing by the Contracting Officer, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Article II hereof, and of the fee, less any sum that may be necessary to settle any unsettled claims for labor or material, or any claim the Government may have against the Contractor. The Contracting Officer shall accept the completed work with reasonable promptness. The Contractor shall, if required, furnish the Government with a release of all claims against the Government arising under and by virtue of this contract other than such claims, if any, as be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

Article IV. Records and accounts—Inspection and audit

1. The Contractor agrees to keep records and books of account on a recognized cost-accounting basis, showing the actual cost to him of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and shall at all times have access to the premises, work and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the Contractor pertaining to said work; and the [fol. 24] Contractor shall preserve for a period of 3 years after completion or termination of this contract, all the books, records, and other papers herein mentioned.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records, and papers of the contracting officer relating to the cost of the work for the purpose of checking up and verifying such cost.

Article V. Special requirements

1. The contractor hereby agrees that he will:

(a) Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such amounts and for such periods of time as the Contracting Officer may approve or require.

(b) Procure all necessary permits and licenses; obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State, Territory, or subdivision thereof wherein the work is done, or of any other duly constituted public authority.

(c) Unless this provision is waived in writing by the contracting officer, reduce to writing every contract in excess of two thousand dollars (\$2,000) made by him for the purpose of the work hereunder for services, materials, supplies, machinery, or equipment, for the use thereof; insert therein

a provision that such contract is assignable to the Government; make all such contracts in his own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchases in excess of \$500 shall be made or placed without the prior approval of the Contracting Officer.

(d) Enter into no subcontract for any portion of the work, except in the form prescribed by the Secretary of War, nor without the written approval of the Contracting Officer. Subcontracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly in or in part at the site of the work, or some part of the work described in Article I hereof.

(e) At all times during the progress of the work keep at the site thereof a duly appointed and qualified representative who shall receive and execute on the part of the Contractor such notices, directions, and instructions as the Contracting Officer may give.

(f) The Contracting Officer may require the Contractor to dismiss from the work such employee as the Contracting [fol. 25] Officer deems incompetent, careless, insubordinate, or otherwise objectionable.

(g) At all times use his best efforts in all acts hereunder to protect and subserve the interest of the Government.

Article VI. Termination of Contract by Government

1. Should the Contractor at any time refuse, neglect, or fail to prosecute the work with promptness and diligence, or default in the performance of any of the agreements herein contained, or should conditions arise which make it advisable or necessary in the interest of the Government to cease work under this contract, the Government may terminate this contract by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract

and shall proceed to cancel promptly all existing orders and terminate work under all subcontracts insofar as such orders and/or work are chargeable to this contract.

2. If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession, for the purpose of completing the work contemplated by this contract, of all materials, tools, equipment, and appliances and all options, privileges, and rights, and may complete or employ any other person or persons to complete said work.

3. Upon the termination of this contract as hereinbefore provided, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

(a) The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such obligations or commitments.

[fol. 26] (b) The Government shall reimburse the Contractor for all expenditures made in accordance with Article II and not previously reimbursed.

(c) If this contract is terminated for the convenience of the Government, the Government shall reimburse the Contractor for such further expenditures after the date of termination for the protection of Government property and for accounting services in connection with the settlement of this contract as the Contracting Officer may approve.

(d) The Government shall pay to the Contractor any unpaid balance for the rental of the Contractor's equipment in accordance with Article II to the date of termination, and if any of the Contractor's equipment is retained by the Government under the provisions of this article, additional compensation therefor shall be paid in accordance with Article II, either by purchase or rental at the election of the Contracting Officer.

(e) The obligation of the Government to make any of the payments required by this article, or by paragraph 3, Article III of this contract, shall be subject to any unsettled claims for labor or material or any claim the Government may have against the Contractor.

Article VII. Preference for Domestic Articles

1. In the performance of the work covered by this contract the Contractor, subcontractors, materialmen or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be expected by the head of the department under the proviso of title III, section 3, of the Act of March 3, 1933, 47 Stat. 1520 (U. S. Code, title 41, section 10b).

2. Inasmuch as the materials listed below or the materials from which they are made are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory qualities, their use in the work herein specified is hereby authorized without regard to the country of origin:

Asbestos	Jute	Platinum
Balsa wood	Kaurigum	Rubber
China wood oil	Lac	Silk
(Tung oil)	Nickel	Sisal
Chromium	Nickle alloy	Teak wood
Cork	(Monel metal)	Tin

Articles, materials, or supplies made in the United States and containing mercury, antimony, tungsten, or mica of foreign origin may be used (subject to the requirements of

applicable specifications) in the work herein specified, if such manufactured articles, materials, or supplies have been made in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

Article VIII. Convict labor

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

Article IX. Rates of wages—Nonrebate

1. In accordance with the act of August 30, 1935 (49 Stat. 1011; 40 U. S. C. 276a and 276a-1), the following provisions shall apply:

(a) The Contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at the time of payment, computed at wage rates not less than those established by the Secretary of Labor for the work herein specified, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The Contracting Officer shall have the right to withhold from the Contractor so much of accrued payments as may be considered necessary by the Contracting Officer to pay to laborers and mechanics employed by the Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors, or their agents.

(b) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor [fol. 28] or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the Contractor, terminate his right to pro-

ceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise and the Contractor shall be liable to the Government for any excess costs occasioned the Government thereby.

2. Should the Contractor or any subcontractor pay to any laborer or mechanic a wage based upon a rate in excess of the wage rate for the classification in which said laborer or mechanic is included as established for the work by the Secretary of Labor, such increased wage shall be at the expense of the Contractor and shall not be reimbursed by the United States. When, in connection with the audit and report by the Contracting Officer or his authorized representative, of the Contractor's pay rolls, prior to reimbursement as contemplated in paragraph 1, of article II hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates, established for such laborers and/or mechanics, the reimbursement made to the Contractor on account of such pay rolls will not include such excess payments. The provisions of this section shall not apply when wage rates for a particular classification greater than those prescribed by the Secretary of Labor have been approved in writing by the Contracting Officer who executed this contract or his successor.

3. The Contractor shall furnish to the Government representative in charge at the site of the work covered by this contract or if no Government representative is in charge at the site, shall mail to the Federal agency having control of the project, within 7 days after the payment of each and every weekly pay roll, an affidavit, in the form prescribed by regulations issued jointly by the Secretary of the Treasury and the Secretary of the Interior under date of January 8, 1935, or any modification thereof pursuant to the act of June 13, 1934 (48 Stat. 948; 40 U. S. C. 276b and 276c), sworn to by the officer or employee of the Contractor supervising such payment to the effect that each and every person employed on the work has been paid in full the weekly wages shown on the pay roll covered by the affidavit; that no rebates, or deductions from any wages due such employee or employees not required by law have been made either directly or indirectly, and that to the best of the [fol. 29] knowledge and belief of the affiant no agreement

or understanding exists with any person employed on the project pursuant to which any person, directly or indirectly, by force, intimidation, threat, or otherwise, induces or receives any deductions or rebates in any manner whatever from any sum paid or to be paid any person for labor performed in carrying out this contract. At the time upon which the first affidavit with respect to wages — said employees is filed the Contractor shall also furnish an affidavit executed by its president or a vice president, setting forth the name of the officer or employee who supervises the payment of employees and stating that such officer or employee is in a position to have full knowledge of the facts set forth in the affidavit respecting the payment of wages of employees. A similar affidavit shall be filed immediately in the event that a change is made in the officer or employee who supervises the payment of employees. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to insure fulfillment of the requirements of this article.

Article X. Workmen's compensation laws

The act of June 25, 1936 (49 Stat. 1938, 1939; 40 U. S. C. 290), provides that the several States have authority to make their workmen's compensation laws applicable to contracts for the construction, alteration, or repair of a public building or public work of the United States, and the several States are vested with the power and authority to enforce such State laws on lands of the United States.

Article XI. Accident prevention

The Contractor shall at all times exercise reasonable precautions for the safety of employees on the work and shall comply with all applicable provisions of Federal, local, State, and municipal safety laws and building construction codes.

Article XII. Officials not to benefit

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article XIII. Approval required

This contract shall be subject to the written approval of The Secretary of War and shall not be binding until so approved.

Article XIV. Covenant against contingent fees

The Contractor warrants that he has not employed any [fol. 30] person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from payments due the Contractor the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by Contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Article XV. Disputes

Except as otherwise specifically provided herein, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Chief of Branch, concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto, when the amount involved is \$15,000 or less. When the amount involved is more than \$15,000, the decision of the Chief of Branch shall be subject to written appeal within 30 days by the Contractor to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the Contractor shall diligently proceed with the work as directed.

Article XVI. Contractor's organization and methods

Upon the execution of this contract the Contractor shall submit to the Contracting Officer a chart showing the executive and administrative personnel to be regularly assigned for full or part-time service in connection with the work under contract, together with a written statement of the duties of each person and the administrative procedure to

be followed by the Contractor for the control and direction of the work; and the data so furnished shall be supplemented as additional pertinent data become available. There shall also be submitted to the Contracting Officer by the Contractor charts of the various field organizations showing all personnel, other than artisans, mechanics, helpers, and laborers to be assigned for full or part-time service outside of the central-office organization, together with a written statement of the duties and rates of pay of each person and the procedure proposed to be allowed by the Contractor for the accomplishment of all field work, including temporary requirements; and the data so furnished shall be supplemented as additional pertinent data become available. Statements of procedure shall include purchasing, disbursing, accounting, transportation, storage, employment, [fol. 31] housing, sanitation, subsistence, recreation, and similar essential activities and methods.

Article XVII. Definitions

1. The term "Chief of Branch" refers to the head of a branch or bureau of the War Department, viz., the Quartermaster General, the Chief of Engineers, etc.

2. The term "his duly authorized representative" shall mean any person authorized by the Secretary of War or a chief of branch, as the case may be, to act for him, other than the Contracting Officer.

3. Except for the original signing of this contract, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

Article XVIII. Alterations

The following changes were made in this contract before it was signed by the parties hereto;

Changes are set forth in Appendix "B", attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed this contract as of the day and year first above written.

The United States of America, by (S.) C. D. Hartman, Brig. Gen., QMC., Contracting Officer; Dunn Construction Company, Inc. (Contractor), by (S.) W. R. J. Dunn, (Seal), President, and John S.

Hodgson and Company (Contractor), by (S.) John S. Hodgson, Partner, Both of Birmingham, Alabama.

Approved September 10, 1940. (S.) E. B. Gregory, Major General, The Quartermaster General.

Two Witnesses: (S.) Mary L. Biinte, 1325 Emerson St. N. E., Washington, D. C. (S.) O. P. Easterwood, Jr., 4200 Fourth St., North Arlington, Va.

Approved September 12, 1940, by direction of the Secretary of War. (S.) Robert P. Patterson, The Assistant Secretary of War.

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, W. R. J. Dunn, who signed this contract for the Dunn Construction Company, Inc., had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

(S.) C. D. Hartman, Brig. Gen., QMC., (Contracting Officer).

[fol. 32] Directions for Preparation of Contract.

1. This form shall be used when authorized by the Secretary of War for formal contracts for the construction, alteration, or repair of buildings or works accomplished under the provisions of the law specifically authorizing the use of a cost-plus-a-fixed-fee contract.

2. There shall be no deviation from this approved contract form, except as provided for in these directions without approval of the Secretary of War or his duly authorized representative. Where interlineations, deletions, additions, or alterations are authorized, specific notations of the same shall be entered in the blank space following the article entitled "Alterations" before signing. This article is not to be construed as general authority to deviate from the form. Deletion of the descriptive matter not applicable in the preamble need not be noted in the article entitled "Alterations".

3. All blank spaces on the title page must be filled in including a citation of the act or acts authorizing the con-

tract. The Contracting Officer or his duly authorized representative will sign the certificate of availability of funds appearing on the title page.

4. The blank space in the preamble is intended for the insertion of a statement of the work to be done, together with place of performance, or for the enumeration of papers which contain the necessary data.

5. The blank spaces in articles I and XIII must be filled in with the data indicated therein. The contract must be dated, and the performance and payment bonds, if required, must bear the same date.

6. Each appendix will contain a sufficiently descriptive statement to identify it with the contract viz:

Appendix "A"

to Contract No. ——— dated — —, — — between The United States of America and ——— for the construction of ———.

7. Contracts subject to approval are not valid until approved by the authority designated to approve them, and the Contractor's number will not be delivered, nor any distribution made, until such approval. All changes and deletions must have been made before the contract is forwarded for approval.

8. The number of executed copies and of certified copies, designation of disbursing officer, statement of appropriation, amount of bond if required, as well as other administrative details, shall be as directed, by the Chief of Branch to which the contract pertains.

9. An Officer of a corporation, a member of a partnership, or an agent signing for the principal, shall place his signature and title after the word "By" under the name of the principal. A contract executed by an attorney or agent on behalf of the Contractor shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the Contractor.

10. If the Contractor is a corporation, one of the certificates following the signature of the parties must be executed.

If the contract is signed by the secretary of the corporation, then the first certificate must be executed by some other officer of the corporation under the corporate seal, or the second certificate executed by the Contracting Officer. In lieu of either of the aforementioned certificates there may be attached to the contract copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

11. The full name and business address of the Contractor must be inserted and the contractor signed with his usual signature. Typewrite or print name under all signatures to contract or bonds.

12. Any provisions respecting labor or materials required by law to be included in this contract and any additional contract provisions deemed necessary for the particular work shall be made the subject of one or more additional articles or included in the specifications, appendix "A".

[fol. 34] STATE OF ALABAMA,
Jefferson County:

I, the undersigned, I. S. Hoffpauir, as secretary of the Dunn Construction Company, Inc., hereby certify that the following is an exact extract from the by-laws of said corporation:

"The President shall be the chief executive officer of the company, he shall preside at all meetings of the Directors and of the Stockholders; he shall have general and active management of the business of the company; shall see that all orders and resolutions of the Board of Directors are carried into effect; shall make and execute all contracts for or pertaining to construction work of any and every kind, without formal approval of the Directors' express authority to so make and execute such contracts being hereby conferred upon him, together with right to affix company seal thereto; shall execute all contracts and agreements otherwise authorized by the Board."

I further certify that W. R. J. Dunn is at this time and has been for many years President of the Dunn Construction Company, Inc.

(S.) I. S. Hoffpauir, Secretary. (Seal.)

Subscribed and sworn to before me this the 9 day of September, 1940. (S.) Jessica Ingram, Notary Public. (Seal.) Term expires Dec. 19, 1942.

Appendix "B"

To Contract No. W. 6119 qm-161, dated September 9, 1940, between The United States of America and Dunn Construction Company, Inc., and John S. Hodgson and Company

1. The following changes were made in the aforementioned contract before it was signed:

a. In Article II, Section 1 (c) lines 1, 2, and 3 the words "mentioned in the schedule of rental rates in Appendix "B", hereto attached and made a part hereof, except as hereinafter set forth.", were deleted therefrom and in lieu thereof the following words were inserted: "approved by the Contracting Officer."

b. In Article II, Section 1 (d), the following phrase was inserted in line 1 between the words "unloading" and "of": "at the site of the work". There was also inserted in line [fol. 35] 3 of said Article and Section between the words "work" and "except" the phrase: "and return transportation f. o. b. cars to the point of original shipment or equivalent mileage".

c. In Article II, Section 2, lines 2 and 3, the words "mentioned in the schedule of rental rates hereto attached, except as hereinafter set forth" were deleted therefrom and in lieu thereof the following words were inserted: "approved by the Contracting Officer."

d. In Article IX, Section 2, the following sentence was added at the end thereof: "The provisions of this section shall not apply when wage rates for a particular classification greater than those prescribed by the Secretary of Labor have been approved in writing by the Contracting Officer who executed this contract or his successor."

War Department, O. Q. M. C.

Change Order A

Authorization and Approval of Wage Rates in Excess of
Those Predetermined by the Secretary of Labor

Reference is made to Contract No. W 6119 qm-161 Dated 9/9/40 between the United States of America, signed for and in behalf thereof by C. D. Hartman, Brigadier General, Quartermaster Corps, as Contracting Officer, and Dunn Construction Company, Inc., and John S. Hodgson & Co., Birmingham, Alabama, for the construction of a complete tent camp, including necessary buildings, structures, utilities and appurtenances thereto, at Fort McClellan, Alabama. It has been determined that in order to complete promptly and efficiently the work provided for thereunder, it is necessary that the Contractor and Sub-Contractor pay to laborers and mechanics a higher rate of wages than the predetermined minimum rates prescribed by the Secretary of Labor for classifications enumerated below,

Therefore, in accordance with Section 2, Article IX, as amended by Appendix "B", of the Contract, the Contracting Officer hereby approves as a reimbursable cost to the Contractor and Sub-Contractors, payment of the following rates of wages:

Classification.	Rate.
Asbestos Workers	\$1.25 per hr.
" Helpers .....	.62½ " "
Bricklayers	1.25 " "
" Helpers .....	.50 " "
[fol. 36] Plumbers	1.25 per hr.
" apprentices .....	.62½ " "
Rodmen	1.25 " "
Roofers, Composition	1.00 " "
" " Kettlemen .....	.50 " "
Roofers, Composition Apprentices .....	.50 " "
" Slate & Tile	1.25 " "
Sheet metal workers, Helpers .....	.50 " "
Structural Iron Works	1.50 " "
Common Laborers .....	.40 " "
Builders Laborers .....	.50 " "
Marble Masons, Slate & Structural Glass Workers	1.25 " "

Classification.	Rate.		
Mosaic Terazo Workers	1.25	"	"
" " " .....	.60	"	"
Sprinkler Fitters	1.25	"	"
" " Helpers .....	.50	"	"
Steam Fitters	1.25	"	"
" " helpers .....	.62 $\frac{1}{2}$	"	"
Stone Cutters	1.25	"	"
Stone Masons	1.25	"	"
" " helpers .....	.50	"	"
Tile Layers	1.25	per hr.	
" " helpers .....	.50	"	"
Waterproofers	1.25	"	"
Watchmen .....	.40	"	"
Waterboys .....	.40	"	"
Painters & Decorators	1.00	"	"
Plasterers	1.25	"	"
" helpers & laborers .....	.50	"	"
Carpenters	1.00	"	"
Cement Finishers	1.25	"	"
Electricians	1.25	"	"
Electrician, Apprentices .....	.62 $\frac{1}{2}$	"	"
Elevator Constructors	1.50	"	"
Glasiers	1.00	"	"
Hodcarriers .....	.50	"	"
Sheet Metal Workers	1.25	"	"
Ornamental Iron Workers	1.50	"	"
[fol. 37] Rodlayers, Reinforced	1.25	per hr.	
Structural Iron Workers, Apprentices .....	.93	"	"
Concrete Laborers .....	.40	"	"
Lathers, Metal	1.00	"	"
" Wood	1.00	"	"
Marble Masons, Slate & Structural Glass Workers, helpers .....	.62 $\frac{1}{2}$	"	"
Operators of Powered Equipment:	1.37 $\frac{1}{2}$	"	"
Operators of two-drum equipment			
Operators of Heavy Duty Machines of over one yard capacity	1.50	"	"
All other operators of powered equipment	1.25	"	"
Oilers and Firemen .....	.75	"	"
Mechanics for Comple Equipment	1.50	"	"

Date September 30, 1940. By direction of the Contracting
Officer.

(S.) E. E. Kirkpatrick, Capt. Q. M. C.

Authenticated Copies:	Executed numbers:
1 to C. Q. M.	1 To C. Q. M. for contractor
1 To Disbursing Officer	2 To Legal Section
1 To Contracting Officer	(See AR 5—200, par. 15 & 19)
1 To Legal Section	
1 To Fixed Fee Section	
1 to Adm. Sec. O. Q. M. G. (Lab. Rel.)	

War Department, O. Q. M. G.

Change Order B.

**Authorization and Approval of Wage Rates in Excess of
Those Predetermined by the Secretary of Labor**

Reference is made to Contract No. W 6119 qm-161 Dated 9/9/40 between the United States of America, signed for and in behalf thereof by C. D. Hartman, Brigadier General, Quartermaster Corps, as Contracting Officer, and Dunn Construction Co., Inc., and John S. Hodgson & Company, Birmingham, Alabama, for the construction of a complete tent camp, including necessary buildings, structures, utilities and appurtenances thereto at Fort McClellan, Alabama. It has been determined that in order to complete promptly and efficiently the work provided for thereunder, it is necessary that the Contractor and Sub-Contractor pay to laborers and mechanics a higher rate of wages than the predetermined minimum rates prescribed by the Secretary of Labor for classifications enumerated below.

[fol. 38] Therefore, in accordance with Section 2, Article IX, as amended by Appendix "B", of the Contract, the Contracting Officer hereby approves as a reimbursable cost to the Contractor and Sub-Contractors, payment of the following rates of wages:

Classification.	Rate.
Asbestos workers	\$1.25 per hr.
" " helpers .....	.62½ " "
Blacksmiths	1.00 " "
Asphalt rakers, tampers and smoothers...	.60 " "
Bricklayers	1.25 " "
" " 2nd year .....	.70 " "
Carpenters, journeymen	1.00 " "
" apprentices: 1st year .....	.60 " "

Classification.	Rate.	
Carpenters, apprentices: 3rd year	.80	per hr.
" " 4th year	.90	" "
Cement finishers	1.25	" "
Electricians	1.25	" "
" helpers	.62½	" "
Firemen and oilers	.75	" "
Glaziers	1.00	" "
Jackhammermen	.50	" "
Laborers, unskilled	.40	" "
Machinists	1.25	" "
Mechanics, complex equipment	1.25	" "
" auto	.75	" "
Mason tenders	.50	" "
Mortar mixers	.50	" "
Operators of power equipment:		
Air compressors: portable	1.00	" "
stationary	1.25	" "
Asphalt plant	1.25	" "
Blade graders	.75	" "
Cranes, derricks, draglines, over 1 cu. yd.	1.50	" "
" " " 1 cu. yd. or less	1.25	" "
Distributors (bituminous surfaces)	1.00	" "
Finishing machines (cement concrete pavement)	1.00	" "
Hoists, 1 drum	1.00	" "
" 2 or more drums	1.25	" "
" on steel construction	1.37½	" "
[fol. 39] Mixers, under 1 cu. yd.	1.00	" "
" 1 cu. yd. and over	1.25	" "
Pumps	.75	" "
Rollers	1.00	" "
Scrapers	1.00	" "
Shovels: 1 cu. yd. or less	1.25	" "
" over 1 cu. yd.	1.50	" "
Tractors	.85	" "
Mortar mixing machines	.50	" "
Trenching machines	1.25	" "
Painters	1.00	" "
Pipe layers	1.60	" "
Plasterers	1.25	" "
" tenders	.50	" "
Plumbers	1.25	" "
" helpers	.62½	" "

Classification.	Rate.
Reinforcing rodsetters	1.25 per hr.
Roofers, composition	1.00 " "
Sheet metal workers	1.25 " "
Steam fitters	1.25 " "
" " helpers .....	.62 $\frac{1}{2}$ " "
Structural-iron workers	1.50 " "
Trackmen .....	.50 " "
Truck drivers .....	.50 " "
Well drillers	1.00 " "
" " helpers .....	.75 " "
Boilermakers	1.00 " "

Date November 7, 1940.

By direction of the Contracting Officer.

(S.) E. E. Kirkpatrick, Capt. Q. M. C.

Authenticated copies:

1 to C. Q. M.

1 To Disbursing Officer.

1 To Contracting Officer.

1 To Legal Section.

1 To Fixed Fee Section.

1 To Adm. Sec. O. Q. M. C. (Lab. Rel.).

Executed numbers:

1 To C. Q. M. for contractor.

2 To Legal Section.

(See Ar. 5-200, par. 15 & 19.)

[File endorsement omitted.]

[fol. 40] IN CIRCUIT COURT OF MONTGOMERY COUNTY

SUMMONS AND RETURN

THE STATE OF ALABAMA,

Montgomery County:

To any Sheriff of the State—Greetings:

You are hereby commanded to Summon John C. Curry, Individually, and as Commissioner of Revenue of the State of Alabama, to appear and plead to, answer or demur, within thirty days from the service hereof, to the bill of

Complaint filed in the Circuit Court of Montgomery County, in Equity, against him by United States of America and Dunn Construction Company, Inc., et als.

(Copy of Bill of Complaint attached.)

Witness my hand this 16th day of May, 1941.

Geo. H. Jones, Jr., Register.

Executed by handing the defendant John C. Curry, Individually and as Commissioner of Revenue of the State of Alabama a copy of the within Summons together with copy of Bill of Complaint on the 20 day of May, 1941.

G. A. Mosley, Sheriff, by G. & H., D. S.

IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

AMENDED PETITION FOR DECLARATORY JUDGMENT—Filed May 29, 1941

To the Honorable Judges of the Circuit Court of Montgomery County, Sitting in Equity:

Comes now the United States of America and Dunn Construction Company, Inc., and John S. Hodgson and Company, trading as Dunn Construction Company, Inc., and John S. Hodgson and Company, and file this their amended petition for a declaratory judgment and respectfully show unto the Court as follows:

1. The plaintiff, the United States of America, is a cor-
[fol. 41] poration sovereign and body politic.

2. The plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, are a partnership consisting of Dunn Construction Company, Inc., a corporation organized and existing under the laws of the State of Delaware, and John S. Hodgson and Company, an Alabama partnership consisting of John S. Hodgson and Alcie J. Hodgson, both of the City of Birmingham in the State of Alabama.

3. The plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership consisting

of Dunn Construction Company, Inc., and John S. Hodgson and Company, with their principal place of business at Anliston, in the State of Alabama, are and have been engaged for and on behalf of the United States as an agency and instrumentality of the United States in the construction of a complete tent camp, necessary buildings, temporary structures, utilities and appurtenances thereto for the United States of America at Camp McClellan, in the State of Alabama, under the provisions and requirements of the contract entered into by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, with the United States of America, a true and certified copy of which is attached hereto marked Exhibit "C" and prayed to be read as a part hereof. Said contract provides that the cost of performing and executing the same, including the cost of all materials purchased therefor and the amount of any applicable and valid taxes, shall be assumed and borne by the plaintiff, the United States of America, and reimbursement therefor made by the United States of America to the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid.

4. The defendant, the Honorable John C. Curry, is Commissioner of Revenue of the State of Alabama.

5. On May 8, 1941, the State Department of Revenue of the State of Alabama, as will appear from a copy of a minute entry of the State Department of Revenue, which is attached hereto marked Exhibit "A" and prayed to be read as a part hereof, determined pursuant to Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, and upon information in the possession of the State Department of Revenue that for the quarterly period beginning January 1, 1941, and ending March 31, 1941, the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, had made purchases of tangible personal property during the [fol. 42] said quarterly period which it is alleged is subject to the tax imposed by Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, and computed and determined the amount of tax due by the plaintiffs, Dunn Construction Company, Inc. and John S. Hodgson

and Company, a partnership as aforesaid, for the said period as follows:

Item 1. Total sales price of tangible personal property purchased by said Taxpayers outside of Alabama or in interstate commerce, for storage, use or consumption by said taxpayers in this State, upon which the seller has not collected from said Taxpayers the use tax (not including purchases of automotive vehicles)	\$2,313.17
Item 4. Total amount remaining as measure of tax	\$2,313.17
Item 5. Amount of tax (2% of Item 4)	\$ 46.26
Item 6. Plus 10% Penalty upon \$—	\$ 4.63
Item 7. Plus interest at the rate of $\frac{1}{2}$ of 1% per month, or fraction thereof, from the 20 day of April, 1941, to the 8 day of May, 1941, upon the tax as herein computed and determined	\$.23
Item 8. Total tax, penalty, and interest thereon due to the 8 day of May, 1941	\$ 51.12

6. Based upon such computation and determination the State Department of Revenue ordered, as will appear from the minute entry attached hereto as Exhibit "A", that the amount of tax determined be assessed against the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as and for the amount of tax due by them under the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, together with \$4.63 penalty thereon and interest upon the amount of said tax at the rate of $\frac{1}{2}$ of 1% per month or fraction thereof from the 20th day of April, 1941, and that written notice of the assessment be given to the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as required by the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96.

7. On May 8, 1941, the State Department of Revenue, by John C. Curry, Commissioner of Revenue, delivered to the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, a copy of the minute entry and assessment mentioned and described and fully set out in the minute entry, a copy of which is attached hereto as Exhibit "A", at which time the

plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, acknowledged receipt of the copy of the assessment above [fol. 43] mentioned and described and waived any further or other notice thereof.

8. On May 8, 1941, upon the demand of the State Department of Revenue, and of John C. Curry, Commissioner of Revenue, for the payment of tax so determined to be due and assessed against the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, in the sum of \$46.26, together with \$4.63 penalty and 23¢ interest from the 20th day of April, 1941, as assessed by the State Department of Revenue in the minute entry of the State Department of Revenue, a copy of which is attached hereto as Exhibit "A", the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, paid to the State Department of Revenue and John C. Curry, Commissioner of Revenue, the sum of \$51.12, being the sum of \$46.26, as fixed by the assessment of May 8, 1941, with a penalty of \$4.63 and interest thereon from April 20, 1941, in the amount of 23¢. Such payment was made by plaintiffs Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, and accepted by the State Department of Revenue and John C. Curry, Commissioner of Revenue, under protest duly verified. A copy of such protest and acceptance thereof by the State Department of Revenue is attached hereto and marked Exhibit "B" and made a part hereof as fully as if set out herein.

9. The tax so assessed by the State Department of Revenue and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, was assessed upon the sales price of tangible personal property purchased outside the State of Alabama consisting of roofing materials purchased by the plaintiff, the United States, or by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States and in connection with their performance of their contract with the United States, a copy of which is attached hereto marked Exhibit "C" and stored, used or consumed by the United States or by these plaintiffs, Dunn Construction Company, Inc., and John S.

Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States, in and about the construction by them for and on behalf of the United States of certain buildings, warehouses and other camp and military facilities under the contract of the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, with the [fol. 44] United States at Camp McClellan near Anniston, Alabama. Plaintiffs allege that the transactions and activities of the agents and instrumentalities of the United States entered into for and on behalf of the United States are immune from taxation by the State of Alabama under the Constitution of the United States of America fully as much as are the transactions and activities of the United States itself, and further specifically allege that property purchased by the United States, its agencies and instrumentalities, and the storage use or other consumption of property by the United States, its agencies and instrumentalities, are immune under the Constitution of the United States of America from the tax imposed by Act No. 67, General Acts of Alabama, Regular Session, 1939, p. 96.

10. The tax so assessed by the State Department of Revenue and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, was assessed upon the sales price of tangible personal property purchased by the plaintiff, the United States, or by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States, without the State of Alabama, but for and on behalf of the United States and delivered to the United States at Camp McClellan, Anniston, Alabama, and stored, used or otherwise consumed by or on behalf of the United States as described in paragraph 9; and the plaintiffs allege tangible personal property so purchased, stored, used or otherwise consumed by the United States or by its agents or instrumentalities is exempt from the tax imposed by Act No. 67 of the General Acts of Alabama, Regular Session, 1939, under Subsection (b) of Section 3 of that Act.

11. The tax so assessed by the State Department of Revenue and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, was assessed upon the sales prices of tangible

personal property purchased outside the State of Alabama by the plaintiff, the United States or by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States but for and on behalf of the United States and delivered to the United States or its agents or instrumentalities at Camp McClellan, Anniston, Alabama, which is within an area within the exclusive jurisdiction of the United States and the plaintiffs allege that such purchases and the storage, use or other consumption of such property on said Federal reservation are immune from taxation by the State of Alabama under the Constitution [fol. 45] of the United States of America, and further allege that the State Department of Revenue in applying the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, to the purchase, storage, use or other consumption of the property so made by the United States or on its behalf by its agents and instrumentalities have applied the provisions of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, in a manner which renders the said Act invalid and void under the Constitution of the United States of America.

12. Plaintiffs allege that the purchase, storage, use or other consumption of the roofing material, above described, was by the plaintiffs, the United States of America, or by the plaintiffs, the Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, as an agent and instrumentality of the United States for and on behalf of the United States and was in fact the purchase, storage, use or other consumption by the United States, the taxation of which by the State of Alabama is taxation of the United States by the State of Alabama; that such taxation is prohibited by and violative of the Constitution of the United States of America.

13. Plaintiffs allege that the enactment of Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96, insofar as it subjects to taxation the purchase, storage, use or other consumption of property by the United States or by the agents and instrumentalities of the United States for and on behalf of the United States is invalid and void because violative of the Constitution of the United States of America.

14. Plaintiffs allege that a controversy exists between the defendant and the plaintiffs as to whether the plaintiffs are exempt from taxation under Act No. 67 of the General Acts of Alabama, Regular Session 1939, p. 96, and immune from taxation by the State of Alabama under the Constitution of the United States of America and that such controversy exists not only with respect to tangible personal property which furnishes the basis for the assessment made by the State Department of Revenue for the period January 1, 1941 to March 31, 1941, but with respect to similar tangible personal property and other tax periods prescribed by Act No. 67 of the General Acts of Alabama, Regular Session, 1939, p. 96.

Wherefore, Premises Considered, the plaintiffs pray that this Court will take jurisdiction of this action, that the [fol. 46] Honorable John C. Curry, Individually and as Commissioner of Revenue, be made a party defendant to this bill and that process issue to him hereunder in accordance with the rules and practice of this Court. And plaintiffs further pray that this Honorable Court will, upon hearing, render a declaratory judgment and decree determining that the plaintiffs, Dunn Construction Company Inc., and John S. Hodgson and Company, a partnership as aforesaid, are not liable for the taxes assessed by the defendant and paid by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, on May 8, 1941, and that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership as aforesaid, are entitled to a refund of the tax paid by them, as aforesaid, together with the penalty and interest thereon with interest, and plaintiffs pray for such other and further relief as may be appropriate and which to this Honorable Court may seem meet.

Samuel G. Clark, Jr., Assistant Attorney General,
Thomas D. Samford, United States Attorney, Attorneys for Plaintiffs.

[File endorsement omitted.]

PROCEEDINGS BEFORE STATE DEPARTMENT OF REVENUE

Secretary's Certificate to proceedings before State Department of Revenue omitted in printing.

[fol. 47] Use tax assessment omitted. Printed side page 8, ante.

[fols. 48-50] Protest of payment of use tax omitted. Printed side page 9, ante.

[fol. 51] IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

DEMURRER AND ANSWER TO PETITION AS AMENDED—Filed
May 29, 1941

Comes John C. Curry, individually and as Commissioner of Revenue of the State of Alabama, défendant in the above entitled cause, and for answer to the Petition for Declaratory Judgment, as amended, filed in this cause makes the following defenses:

First Defense

Demurrer

Comes John C. Curry, individually and as Commissioner of Revenue of the State of Alabama, defendant in the above entitled cause, and demurs to the Petition for Declaratory Judgment, as amended, filed in this cause, and for grounds of such demurrer thereto assigns, separately and severally, the following:

1. There is no equity in the petition.
2. Said petition fails to set out facts sufficient to entitle plaintiffs to the relief prayed for therein.
3. Said petition fails to allege sufficient facts to show [fol. 52] that the determination or assessment of said tax was illegal.
4. Said petition fails to allege sufficient facts to show that said tax was illegally levied or assessed against or collected from the contractors therein mentioned, namely, Dunn Construction Company, Inc., and John S. Hodgson and Company.

5. Said petition fails to allege sufficient facts to show that the tangible personal property purchased at retail by said contractors for storage, use or consumption by them within the State of Alabama, under and pursuant to the contract with the United States mentioned in said petition, was exempt from the provisions of the said Alabama Use Tax Act, or from the tax assessed and collected with respect thereto under said Act.

6. Said petition fails to aver sufficient facts to show that said contractors were immune from the tax alleged to have been levied and assessed against and paid by such contractors.

7. The facts set forth in said petition are insufficient to show that said contractors were such an agency or instrumentality of the United States as would entitle them to assert or claim any immunity from the tax alleged to have been determined or assessed against and paid by such contractors.

8. For that the facts alleged in said petition show that said contractors, namely, Dunn Construction Company, Inc., and John S. Hodgson and Company, were legally liable for the determining or assessment against and payment by them of said tax, together with penalty and interest thereon, mentioned in said petition.

9. For that the facts alleged in said petition show that the United States consents to the imposition of the tax therein alleged to have been determined or assessed against and paid by said contractors.

10. For that the facts alleged in said petition show that the United States, in and by the terms of said contract therein mentioned, waived any immunity from said tax mentioned in said petition with respect to the purchase, or storage, use, or consumption by said contractors of the tangible personal property, for the storage, use or consumption of which property said tax is alleged to have been determined or assessed against and paid by said contractors.

11. For that the facts alleged in said petition show that the United States, in and by said contract, consented or agreed to permit said tangible personal property or building materials therein mentioned to be purchased by said

contractors for storage, use or consumption by them, sub-[fol. 53] ject to the tax imposed upon or required to be paid by said contractors under the provisions of said Alabama Use Tax Act.

12. For that there is a misjoinder of parties plaintiff in this: The United States of America is not shown to be either a necessary or proper party plaintiff in said action.

13. For that all the plaintiffs are not shown to have a common interest in the subject matter of said action, or in the relief prayed for therein.

14. For that said petition is repugnant in its averments and in the relief prayed for in this: it avers that said contractors were immune from the payment of said tax, yet shows that the payment thereof was expressly consented and agreed to by said contractors and the United States of America.

15. For that the averments in said petition, to the effect that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, are agents or instrumentalities of the United States in the performance of said contract, are mere conclusions of the pleader, unsupported by the allegations of fact contained in said petition.

16. For that it appears from the facts alleged in said petition that the United States expressly consented to the payment of said taxes by the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company.

17. For that it appears that the United States expressly consented to the levy, assessment and payment of the taxes therein mentioned.

18. For that the averments to the effect that the transactions therein mentioned were immune from said tax, are alleged as mere conclusions of the pleader, unsupported by the facts therein alleged.

19. For that the facts therein alleged fail to show wherein said taxes were not applicable to the storage, use or consumption by said contractors of the tangible personal property therein mentioned.

20. For that said petition fails to show wherein said taxes were invalid or illegally assessed against the contractors therein mentioned.

21. For that the facts alleged in said petition show that the contractors therein mentioned were legally liable for said taxes, and the penalty and interest thereon.

22. For that there is a misjoinder of parties plaintiff in [fol. 54] this; said petition seeks to determine a controversial issue between the plaintiff, United States of America, and the other plaintiffs therein named, in which the defendant has no interest.

23. For that the averment in said petition to the effect that said taxes were invalid is a mere conclusion of the pleader, unsupported by the facts therein alleged.

24. For aught that appears therein, the said contractors, Dunn Construction Company, Inc., and John S. Hodgson and Company, purchased said tangible personal property for storage, use or consumption by them within the State of Alabama and so stored, used or consumed the same within the tax period mentioned in said assessment.

25. For that the facts alleged in said petition show that said tax was legally assessed against said contractors and paid by them under and pursuant to the provisions of said contract with the United States of America.

26. For that the averments therein to the effect that said tangible personal property was the property of the United States at the time of the storage, use or consumption thereof by the contractors are mere conclusions of the pleader, unsupported by the facts therein alleged.

And said defendant separately demurs to that phase or aspect of said petition which seeks a declaratory judgment determining that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company are not liable for the taxes assessed by defendant and paid by said named plaintiffs on May 8, 1941, and for grounds of said demurrer assigns, separately and severally, the following:

1. Defendant assigns, separately and severally, each of the grounds of demurrer hereinabove assigned to said petition as a whole.

And defendant separately demurs to that phase or aspect of said petition which seeks a refund of or a declaratory judgment with respect to the refund of the taxes therein

mentioned, together with penalty and interest thereon, and for grounds of said demurrer assigns, separately and severally, the following:

1. Defendant assigns, separately and severally, each of the grounds of demurrer hereinabove assigned to said petition as a whole.

Second Defense

As and for a second defense to said petition, and without waiving the demurrers separately and severally interposed by defendant and incorporated hereinabove, but insisting thereon, the defendant, John C. Curry, individually and as [fol. 55] Commissioner of Revenue of the State of Alabama, in answer to said petition says:

1. He admits the allegations contained in paragraph numbered 1.

2. He admits the allegations contained in paragraph numbered 2.

3. In answer to paragraph numbered 3, defendant alleges that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, acting as a partnership or as members of a joint-venture, with their principal place of business at Anniston (or Birmingham) in the State of Alabama, during the quarterly period beginning January 1, 1941, and ending March 31, 1941, as contractors and under and by virtue of the contract mentioned in said petition, a copy of which is shown by Exhibit C thereto, engaged in the construction for the United States of the buildings and improvements mentioned in said contract; that said buildings and improvements therein mentioned were so constructed by said contractors at Fort McClellan in Calhoun County in the State of Alabama, and that said contractors, under and pursuant to said contract, during said period, purchased at retail certain tangible personal property which was purchased from a point or points outside of the State of Alabama, and which was transported from such point or points and delivered to said contractors within Calhoun County, Alabama, for storage, use or consumption by said contractors in the performance of said contract, and which was, during said period, stored, used or consumed by said contractors within the State of Alabama in the construction of said buildings and improvements by

said contractors under said contract; that said tangible personal property consisted of building materials so purchased at retail and stored, used or consumed by said contractors within the State of Alabama, within said period, in the performance of the obligations assumed by them under said contract; that no sales tax was paid or payable to the State of Alabama with respect to the sale of such tangible personal property to said contractors, and that such storage, use or consumption of such tangible personal property by said contractors was a privilege taxable by the State of Alabama; and that the tax imposed thereon by the State of Alabama against said contractors under the terms and provisions of the Alabama Use Tax Act, Act No. 67 of the General Acts of Alabama, Regular Session, 1939, page 96, approved February 28, 1939, was validly imposed, computed, determined and assessed against said [fol. 56] contractors; and that said tax, together with the interest and penalties therein mentioned, were validly assessed and paid by said contractors.

For further answer to said paragraph numbered 3, defendant expressly denies that said contractors, Dunn Construction Company, Inc., and John S. Hodgson and Company, engaged in the performance of such construction, or purchased, stored, used or consumed said tangible personal property as an agency or instrumentality of the United States, but that such purchases, construction, storage, use and consumption by them was done and exercised by them in their capacity as contractors or independent contractors; that such contractors were legally liable for said taxes; and that said taxes were applicable to the performance of said contractors, or the purchase by them of said tangible personal property or material, or to the storage, use or consumption thereof by said contractors under said contract. Defendant alleges that in and by said contract, and particularly the provisions of paragraph (m) of Article II, Section 1 of said contract, the United States consented to the payment by said contractors of said taxes, and in and by said contract expressly agreed to reimburse said contractors for the payment thereof.

4. Defendant admits the allegations of paragraph numbered 4 of said petition.

5. In answer to paragraph numbered 5 of said petition, defendant admits that on May 8, 1941, the State Depart-

ment of Revenue of the State of Alabama, pursuant to the Alabama Use Tax Act, Act No. 67 of the General Acts of Alabama, approved February 28, 1939, (General Acts of Alabama, Regular Session, 1939, p. 96) determined and assessed against said contractors, namely, Dunn Construction Company, Inc., and John S. Hodgson and Company, the tax, penalty and interest thereon, for the quarterly period beginning January 1, 1941, and ending March 31, 1941, as shown by Exhibit A attached to said petition; that said determination or assessment was made with respect to certain tangible personal property purchased at retail by said contractors from without the State of Alabama for storage, use or consumption by said contractors within this State, and which property was, during said period, so stored, used or consumed by said contractors within the State of Alabama in and about the performance by them of said contract with the United States, a copy of which contract is shown by Exhibit 6 to said petition; and that the storage, use or consumption of said property was not exempt from but subject to the provisions of said Act.

[fol. 57] For further answer to said paragraph, defendant denies that said tax was levied, determined, assessed or collected upon such tangible personal property or the purchase thereof, but was an excise tax imposed upon the storage, use, or consumption thereof by said contractors in this State, as provided by said Alabama Use Tax Act, which act is complementary to the Alabama Sales Tax Act of 1939, Act No. 18 of the General Acts of Alabama of 1939 approved February 8, 1939 (General Acts, Regular Session 1939, p. 16), both of which Acts defendant avers are valid enactments; and defendant denies any charge or implication in said petition to the effect that said use tax therein mentioned was a tax imposed upon said tangible personal property, or the purchase or transportation thereof in interstate commerce.

6. In answer to the allegations of paragraph numbered 6 of said petition, defendant admits that said tax and penalty and interest thereon were duly computed, determined and assessed by the State Department of Revenue against said contractors as the amount of tax, penalty, and interest thereon, due by them under the provisions of said Alabama Use Tax Act, as particularly shown by the minute entry, a copy of which is attached as Exhibit A to said peti-

tion; and that written notice thereof was duly given to said contractors, as required by the provisions of said Alabama Use Tax Act, as shown by acknowledgment or acceptance of service thereof by said contractors endorsed on said minute entry, a copy of which is shown by said Exhibit A.

7. Defendant admits the allegations of paragraph numbered 7 of said petition.

8. Defendant admits the allegations of paragraph numbered 8 of said petition.

9. In answer to the allegations contained in paragraph numbered 9 of said petition, defendant says that the amount of said tax so assessed against said contractors was assessed at the rate of two per cent of the sales price of said tangible personal property, namely, certain roofing or building material purchased by said contractors at retail during said tax period, and which was stored, used or consumed by said contractors in this State during said tax period, the storage, use or consumption of which property was not exempt from the tax imposed by said Alabama Use Tax Act.

For further answer to said paragraph, defendant denies that said tax was levied or assessed upon the purchase or [fol. 58] sale of said tangible personal property, or upon or against said property, or upon or against the transportation or importation thereof.

For further answer to said paragraph, defendant denies that said contractors, acting as a partnership in a joint-venture, under or pursuant to said contract with the United States, or individually or otherwise, were agents or instrumentalities of the United States, in connection with their performance of said contract in such manner or to such extent as to entitle said contractors, or either of the-, to assert or claim any immunity from the tax alleged to have been assessed against and paid by said contractors under the provisions of said Alabama Use Tax Act; and defendant denies that said contractors stored, used, or consumed said tangible personal property as an agent or instrumentality, or as agents or instrumentalities of the United States, but stored, used, or consumed said property as contractors under and by virtue of said contract with the United States in the performance by them of their obligations under said contract in connection with the construc-

tion of the buildings or improvements mentioned in said contract.

For further answer to said paragraph, defendant denies the storage, use, or consumption by said contractors of said tangible personal property during said taxable period within the State of Alabama, and for or with respect to which said tax was assessed and paid by them, was immune from taxation by the State of Alabama under the Constitution of the United States, or otherwise; and defendant further denies that the transactions, activities or privileges for which said tax was assessed and paid by said contractors were in anywise entitled to the immunity from taxation which would have been applicable thereto if such property had been purchased directly by the United States; and defendant denies that the storage, use or other consumption of said tangible personal property so purchased or acquired by said contractors and so stored, used or otherwise consumed by them was immune from taxation under the Constitution of the United States of America, or was immune from the tax imposed under and by virtue of said Alabama Use Tax Act.

10. In answer to the allegations of paragraph numbered 10 of said petition, defendant denies that said tax was assessed upon the sale of said tangible personal property or upon the purchase thereof, or upon said property, or that the same constituted a tax upon an interstate transaction, or constituted a tax upon or against property of the United States of America; and defendant denies that said tangible [fol. 59] personal property was purchased by the United States, but as hereinabove set forth, defendant alleges that said property was purchased by said contractors under and pursuant to said contract, and that thereafter said property was stored, used or otherwise consumed by said contractors in the performance by them of the obligations imposed upon them under the provisions of said contract with the United States; that the tax so imposed upon said contractors was applicable to them and to the performance by them of the duties and obligations imposed upon them under said contract, and to their use of said material; that said tax was a valid tax imposed by the State of Alabama upon said contractors and which, under the provisions of said Alabama Use Tax Act, was duly and legally required to be paid by said contractors; that the assessment and payment

thereof was expressly provided for in said contract, as a part of the cost of each construction, and for the amount of which the United States expressly contracted and agreed to reimburse said contractors, under and pursuant to said contract, and which contract defendant alleges was in full force and effect during said tax period, and is still in full force and effect; and which contract in effect constituted a consent granted by the United States to the State of Alabama for the imposition of such tax and a waiver of immunity, if any, against said tax. And defendant denies that the tangible personal property was, in fact, sold, transferred or delivered to the United States by said contractors or by anyone else, or that the United States or any officer or agent thereof acquired the title thereto prior to the actual storage, use or consumption of said property by said contractors in this State; and defendant alleges that such method of shipment or delivery of said property followed by the contractors and the United States, or either of them, was not such as to permit the storage, use or consumption of said property by said contractors in this State free from said tax; and the defendant alleges that if said property was shipped or delivered to any one other than said contractors, it was for their said use and benefit, or it was contrary to or in violation of the provisions of said contract, or that such method of shipment, delivery or handling of said property was pursued in an attempt to evade the lawful payment of said tax by said contractors; or, if defendant is mistaken in alleging the manner or purpose of such shipment or delivery to any one other than said contractors, defendant alleges that such shipment and delivery were for the purpose of impressing a lien upon said property in favor of the United States, as security for the performance of said contract by said contractors; and defendant alleges that such shipment or delivery of said property to the United States or to any officer or agent thereof was not unconditional, but was for the benefit of and subject to the rights of said contractors, as such, under the terms of said contract to store, use or consume said property in the performance of their said contractual obligations.

11. In answer to the allegations contained in paragraph numbered 11 of said petition, defendant denies that said tax so assessed against said contractors was assessed upon the

sales price, or upon the sale or purchase of said property by said contractors, or against any interstate transaction in connection with such purchase, sale or transportation thereof; and denies that said contractors in the performance of said contract constituted such an agency or instrumentality of the United States as to entitle said contractors to assert any immunity from said tax with respect to the storage, use or consumption by them of such tangible personal property. And defendant denies that said property was unconditionally delivered or caused to be delivered by said contractors to the United States at said Camp McClellan or Fort McClellan in Anniston, Calhoun County, Alabama, or that the title to said tangible personal property vested in the United States before such storage, use or consumption thereof by said contractors, and defendant alleges that said property was, in fact, delivered to said contractors for storage, use or consumption by them in the performance of their said contract upon or at Camp McClellan or Fort McClellan near Anniston in Calhoun County, Alabama, and was so stored, used or consumed by said contractors. Defendant admits that prior to said taxable period said Camp McClellan or Fort McClellan comprised an area over which the State of Alabama ceded to the United States exclusive jurisdiction, but the defendant alleges that subsequent to such cession and before the beginning of said taxable period, under and by virtue of an act or resolution adopted by the Congress of the United States known as the Buck Resolution (Sections 12 to 18, inclusive, Title 4, U. S. C. A., adopted October 9, 1940, effective January 1, 1941), the United States expressly released or relinquished to the State of Alabama over and upon said area jurisdiction to impose said tax, and thereby expressly consented to the application of said use tax against said contractors and against persons engaged in the performance of such contracts as the contract mentioned in said petition, and that, therefore, said use tax [fol. 61] was in all respects applicable for and during said period against said contractors, and that said contractors were not such agencies or instrumentalities of the United States as were or are entitled to assert any immunity from said tax; and that the United States, as to such contractors, by virtue of said contract, and by virtue of the Act or Acts pursuant to which said contract was executed and under and by virtue of the provisions of said Buck Resolution ex-

pressly released or surrendered to the State of Alabama jurisdiction to impose such use tax upon said contractors, and granted to the State of Alabama consent to impose such tax, and in pursuance of which said assessment was made; and defendant therefore alleges that neither said contractors nor the United States are entitled to assert or claim any immunity from or with respect to said tax mentioned in said petition. And defendant denies that the assessment or collection of said tax was or is in violation of the Constitution of the United States; or that said tax constitutes in fact any prohibited or undue burden upon either said contractors or the United States of America.

12. In answer to paragraph 12 of said petition, the defendant denies that said tangible personal property, namely, certain roofing or building material, involved in the assessment mentioned in said petition was purchased by the United States, or that the only storage, use or consumption thereof was by the United States; and defendant alleges that said property was purchased by said contractors, and pursuant to and by reason of said purchase, said material was, in fact, delivered to said contractors as such for and in the performance by them of their obligations under said contract, and was so used by them prior to the delivery thereof to the United States, or the vesting of any title thereto in the United States. If defendant is mistaken in alleging that such property was stored, used or consumed by said contractors prior to any delivery thereof to the United States, he alleges that any delivery of such property to the United States or any officer thereof prior to the storage, use or consumption thereof by said contractors was for the benefit of said contractors, and that the legal and beneficial title or the beneficial title to said property and the right of said contractors to store, use or consume the same in the performance of their obligations under said contract remained in full force and effect until said tangible personal property or material was used by said contractors in and became a part of the buildings or improvements being constructed by said contractors under the provisions of said contract; and defendant denies that the levy or assessment [fol. 62] of said use tax against said contractors under said Alabama Use Tax Act constituted, in law or in fact, a taxation of the United States, or of its property by the State of Alabama in violation of the Constitution of the United States of America.

13. In answer to the allegations of paragraph numbered 13, defendant denies that said Alabama Use Tax Act imposes, or attempts or purports to impose, any tax upon the United States with respect to any property, or the storage, use or consumption of any property purchased or acquired directly by the United States; and defendant denies that either the purchase or the storage, use or other consumption of tangible personal property by said contractors in the performance by them of their contractual obligations under said contract were or are immune from taxation by the State of Alabama, or that such contractors constituted such agents or instrumentalities of the United States as are immune from the tax imposed upon and required to be paid by them under said Alabama Use Tax Act, or that the assessment or collection of said tax was in violation of the Constitution of the United States. On the contrary, defendant alleges that the United States, in and by the terms of the Acts authorizing the execution of said contract, and the provisions of said Buck Resolution, and the provisions incorporated in said contract pursuant to law, constituted and expressed a consent on behalf of the United States to such taxation of said contractors as provided in said Alabama Use Tax Act; and defendant alleges that under and pursuant to said contract, the United States waived its right directly to purchase or acquire said property in such manner as to make such purchase or acquisition immune from taxation.

14. Defendant admits there is a controversy between the defendant and the plaintiffs as to whether said contractors, with respect to the purchase or storage, use or consumption by them of tangible personal property within this State for the purposes and in connection with the performance by said contractors of said contract with the United States, are exempt from taxation under said Alabama Use Tax Act, or are immune from taxation by the State of Alabama under the Constitution of the United States; and that such controversy exists not only with respect to the storage, use, or consumption of the tangible personal property included in said assessment made by the State Department of Revenue against said contractors for said taxable period from January 1, 1941, to March 31, 1941, but also exists with respect to the storage, use or consumption by said contractors or other and similar tangible personal property

[fol. 63] purchased or acquired by said contractors, and stored, used or otherwise consumed by them, pursuant to said contract with the United States, in the same or other tax periods prescribed by said Alabama Use Tax Act.

For further answer to said paragraph, defendant says that the questions presented for adjudication or determination by the Court in this case involve public questions of importance with respect to the revenue of the State of Alabama, and he, therefore, prays that upon the hearing of said cause, the Court enter a declaratory judgment or decree construing said Alabama Use Tax Act, as the same may apply to said contractors with respect to the storage, use or consumption in this State by them of tangible personal property purchased or acquired by them under said contract with the United States, and that this Court will adjudicate and determine whether or not said tax mentioned in said petition was legally assessed against and paid by said contractors or whether or not said contractors are entitled to a refund thereof.

And now having fully answered said petition, defendant prays that it may be hence dismissed with his reasonable costs in this behalf expended.

Thomas S. Lawson, Attorney General; John W. Lapsley, Assistant Attorney General; J. Edward Thornton, Assistant Attorney General.

[File endorsement omitted.]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

AGREED STATEMENT OF FACTS—Filed May 29, 1941

It is agreed by and between the plaintiffs and the defendant in the above cause, by and through their respective attorneys of record, that the following stipulation of facts shall be and constitute an agreed statement of facts on the submission or trial of said cause, and that the Court shall [fol. 64] consider the same, insofar as material, as fully and completely as if testified to or introduced as evidence under the ordinary rules of evidence. Either party may introduce additional evidence on the hearing of said cause should it desire to do so.

Such stipulation and agreed statement of facts is as follows:

1. The transcript of proceedings before the State Department of Revenue as certified by Julia Klinge, Secretary of the State Department of Revenue, under date of May 26, 1941, and filed in this cause is a true and correct copy of the proceedings had before said Department relating to the assessment involved in this cause, and that such certified transcript shall, upon said trial, be introduced in evidence and considered by the Court. The stipulation contained in this paragraph, however, shall not be construed as an admission by the plaintiffs, or either of them, of the legality or validity of the assessment shown therein, nor the liability for the tax, penalty or interest thereon mentioned in said assessment, nor as a waiver by the plaintiffs, or either of them, or any right with respect to any liability or purported liability of the said Dunn Construction Company, Inc., and John S. Hodgson and Company, either for the payment of any sales tax or use tax to the State of Alabama, nor as a waiver of any rights of the United States to contest such assessment, or liability or the validity thereof, or the validity of any Act imposing or purporting to impose such tax.

2. That Exhibit "C" attached to the amended petition for declaratory judgment filed in this cause is a true and correct copy of the contract entered into by and between the United States of America and said Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership, on the 9th day of September, 1940, and which contract, it is agreed, was in full force and effect during the period covered by the assessment hereinabove mentioned and involved in said cause; and which contract was executed for the construction of certain buildings and improvements mentioned in said contract, pursuant to and under the authority of the Acts of Congress mentioned in said contract, namely, Public No. 611, 76th Congress, approved June 13, 1940, and Public No. 703, 76th Congress, approved July 2, 1940.

3. That the Dunn Construction Company, Inc., is a Corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Alabama at Birmingham, Alabama, in which corporation the United

States owns no interest, and that John S. Hodgson and [fol. 65] Company is a partnership composed of John S. Hodgson and Alcie J. Hodgson, both of the City of Birmingham, Alabama, and the said plaintiff, Dunn Construction Company, Inc., and John S. Hodgson and Company, (hereinafter called the partnership), in the execution and performance of said contract aforementioned, were acting jointly as members of a co-venture.

4. That the purchase, storage, use or other consumptions of tangible personal property involved in this cause, were made pursuant to and in the performance of the aforesaid contract with the United States entered into on the 9th day of September, 1940, and in and about the construction by said partnership of a complete tent camp, together with the necessary buildings, utilities and appurtenances specifically mentioned and described in Article I, Subsection 1, of said contract; all of which buildings and improvements were constructed or located upon Fort McClellan in Calhoun County in the State of Alabama.

5. That said Fort McClellan is located upon and constitutes an area situated in Calhoun County in the State of Alabama. That in the year 1918, the lands comprising such area now known as Fort McClellan were acquired by the United States of America by purchase from the individual owners of such lands, and that the deeds thereto from such owners were duly executed and delivered to the United States in the year 1918, which deed conveyed or purported to convey therein a fee simple title to said lands; and that since such acquisition thereof the United States has continuously used such area as a military reservation, or fort; and that all of the buildings and improvements mentioned in said contract executed under date of September 9, 1940, were constructed or required to be constructed upon such area known and hereinafter referred to as Fort McClellan (not including the acquisitions of the United States subsequent to November 18, 1940 for maneuver purposes, which additional areas are not involved herein.)

6. That all of the tangible personal property, the storage, use or consumption of which is involved in the hereinabove mentioned assessment of use tax made by the State Department of Revenue against said plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, was purchased, shipped, delivered, paid for, stored,

used or consumed and reimbursement therefor made in substantially the same manner as hereinafter set forth and stated with respect to certain building material, namely, roofing, purchased from Certainteed Products Corporation [fol. 66] of Atlanta, Georgia, (except for the difference in the name of the vendor and the location of such vendor, and the point of origin or shipment of such tangible personal property from points outside the State of Alabama to said Fort McClellan).

7. (a) That, pursuant to a proposal previously submitted by Certainteed Products Corporation of New York, N. Y., to said partnership to sell a certain large amount of roofing material at a stipulated price, which proposal had been submitted by the partnership to the Constructing Quartermaster at Fort McClellan for his approval, and which had been approved by him, said partnership on January 15, 1941, prepared and submitted to the Constructing Quartermaster a paper or document of which Exhibit "1" hereto attached is a true and correct copy and requested the approval by said Constructing Quartermaster of such purchase, which approval was endorsed thereon, as shown by said Exhibit "1" hereto attached as a part of this agreement. That Raymond P. Reeves, whose name appears on said Exhibit "1", was an employee of the partnership aforesaid.

(b) That thereafter on January 16, 1941, the partnership submitted to said Certainteed Products Corporation an order for the material described in Exhibit "1", as shown by a copy of such order attached hereto marked exhibit "2" and made a part hereof, said order being sent to the Atlanta, Georgia, office of said Certainteed Products Corporation. That the said Raymond P. Reeves, whose name appears on said Exhibit "2" was an employee of the partnership aforesaid, and was the duly authorized agent of said partnership.

(c) That upon receipt of said purchase order mentioned in Subsection (b) of this paragraph, the Certainteed Products Corporation shipped said material therein described as directed therein by freight from Atlanta, Georgia, to "United States Construction Quartermaster, at Fort McClellan, Ala. Account of Dunn Construction Company, Inc., and John S. Hodgson & Company."

(d) That on January 20, 1941, said materials so shipped by Certainteed Products Corporation arrived at Fort McClellan in Southern Railroad Car 13975, which car was placed at the siding within said Fort McClellan where such materials were unloaded from said car. At the time said materials were unloaded, they were inspected and two reports thereof were made, one as shown by a report entitled "Receiving and Inspection Report", a copy of which is shown by Exhibit "3A" hereto attached and made a part of this agreement, and which was a report required to be made by the Constructing Quartermaster, and which report was [fol. 67] signed by Fred McNaron and A. L. Arendale in their respective capacities as above stated. That the words "General Warehouse" mentioned in said Exhibit "3A" referred to a general warehouse which belonged to the United States, and which is located within said Fort McClellan, and which warehouse was used for the storage of materials purchased in connection with the performance of said contract. That as and when the partnership aforesaid required said materials in such construction work, the same were withdrawn by them and used in such construction work in the performance of said contract hereinabove mentioned.

(e) That Exhibit "4" attached hereto and made a part hereof is a true and correct copy of the original invoice of the Certainteed Products Corporation to the partnership aforesaid on account of the purchase hereinabove described, and of certain endorsements noted thereon. The endorsements made on this Exhibit were made thereon by the parties indicated, in the capacity indicated, and all appear upon the original of said invoice.

(f) That the invoice of the Certainteed Products Corporation mentioned in the foregoing sub-paragraph was received by said partnership on February 8, 1941, and on February 20, 1941, that invoice, along with others not involved in this case, was transmitted to the Constructing Quartermaster for his approval for payment by said partnership of said invoice, all of which will appear from Exhibit "5" hereto attached and made a part hereof, which is a true and correct copy of the original invoice transmittal, and that the said invoice was approved for payment.

(g) That thereafter, within 48 hours from the date of such approval, said partnership, namely, Dunn Construc-

tion Company, Inc., and John S. Hodgson and Company, issued their joint check payable to the Certainteed Products Corporation at its New York Office, in full payment of said invoice marked Exhibit "4", said check being drawn in the amount of \$221.72, being the amount of \$226.25, less 2 per centum discount, which check was drawn upon a joint account or deposit in The First National Bank of Anniston, Alabama, and which check upon presentation was paid in due course.

(h) That thereafter, on March 5, 1941, the partnership aforesaid submitted its voucher number 742, a true and correct copy of which is marked Exhibit "6", attached hereto, and made a part hereof, to the United States War Department through the Constructing Quartermaster, for reimbursement for its expenditures aggregating \$9,465.76, and [fol. 68] including its expenditure of \$221.72 made to the Certainteed Products Corporation as aforesaid in and about the purchase of roofing material hereinabove mentioned, but which voucher did not include any amount for Alabama sales or use tax thereon or with respect thereto, no such tax having been paid by the partnership or by the vendor of said material.

(i) That thereafter, the Field Auditor of the Constructing Quartermaster and the Constructing Quartermaster approved said voucher for payment, and on March 11, 1941, said voucher number 742 of which Exhibit "6" is a true and correct copy, was paid by the Finance Office at Fort McClellan, Alabama, to said partnership by United States Government Check dated March 11, 1941, being check No. 31,136, and for the sum of \$9,477.88, payable to said partnership, which said check was in payment of voucher Number 742 of which Exhibit "6" attached hereto is a true and correct copy, and payment of another voucher submitted by said partnership in a similar matter, but which is not pertinent hereto.

(j) That in submitting voucher Number 742 above mentioned for payment, which included the request for reimbursement for the partnership's payment to the Certainteed Products Corporation as aforesaid, the partnership supported its voucher by attaching thereto its request made to the Quartermaster for approval of said purchase, bearing the approval of said Quartermaster for said purchase, a copy of which is attached hereto as Exhibit 1, copies of

its purchase order to the Certainteed Products Corporation, a copy of which is attached hereto as Exhibit 2, the two receiving and inspection reports heretofore mentioned copies of which are attached hereto as Exhibits "3" and "3A", and said invoice of the Certainteed Products Corporation a copy of which is attached hereto as Exhibit "4".

8. It is further stipulated and agreed that the Certainteed Products Corporation maintains no place of business in the State of Alabama and that materials mentioned and described in the foregoing paragraphs of this stipulation were shipped by said Certainteed Products Corporation from the City of Atlanta, State of Georgia, to Fort McClellan, Alabama.

9. It is further stipulated and agreed that the Certainteed Products Corporation has not paid to the State of Alabama any use or sales tax with respect to either the sale, storage, use or other consumption of said material; that the vendors of other tangible personal property involved in said assessment had no place of business within this State, and such property shipped by them was shipped from points outside of this State, in a similar manner, as that shipped by the Certainteed Products Corporation, and [fol. 69] no sales or use tax has been paid thereon by such vendors.

10. It is further stipulated and agreed that the partnership aforesaid made no return to the Department of Revenue of the State of Alabama of the three transactions which are in controversy in this case for either Alabama sales or use tax purposes.

11. It is further stipulated and agreed that as shown by the protest made by the partnership aforesaid, as it appears in the transcript of these proceedings before the Department of Revenue of the State of Alabama, the tax paid by the partnership aforesaid on account of the transactions involved in these proceedings was paid under protest. That said tangible personal property was used in the manner herein stated, in the performance of the aforesaid contract during the tax period mentioned in said assessment, namely, from January 1, 1941, to March 31, 1941.

12. It is further stipulated and agreed that substantially all of the material purchased in connection with the performance of the above-mentioned contract was purchased, paid for and reimbursed in the manner above stated, except

that some of such other purchases were made within the State of Alabama from vendors engaged in business in this State. However, in some instances not involved in the assessment hereinabove mentioned, competitive bids for materials required for the performance of said contract were called for by the Quartermaster General of the United States and after the acceptance of one of the bids received in response to such call, the Quartermaster General informed the Constructing Company and the partnership of such acceptance and requested or directed the partnership above mentioned to purchase said materials from said competitive bidder for and in connection with the performance of said contract, which purchase was thereafter handled in the same manner as if said bid had been originally submitted to said partnership, and said materials were paid for by said partnership and bills for reimbursement therefor were submitted, approved and paid to said partnership in the same manner as in the case of the typical transaction hereinabove mentioned in detail.

It is further stipulated and agreed that the Constructing Quartermaster at Fort McClellan was the representative at Fort McClellan of the Contracting Officer, C. D. Hartman, Brigadier General, Quartermasters Corps, United States Army and that said Constructing Quartermaster was duly authorized to act for and on behalf of the United States and the said Contracting Officer in all matters pertaining to the performance of the contract mentioned in paragraph 2, a true copy of which is attached to the amended petition [fol. 70] for a declaratory judgment, and marked Exhibit "C".

It is further stipulated and agreed that the plaintiffs, Dunn Construction Company, Inc., and John S. Hodgson and Company, a partnership have made demand upon the United States through the Construction Quartermaster and the Quartermaster General for reimbursement to it for the amount of said taxes paid by the partnership to the State of Alabama, the same being taxes assessed against it by the State of Alabama under the provisions of the Alabama Use Tax Act No. 67 of the General Acts of Alabama, Regular Session, 1939, page 96, paid by the partnership under protest.

Thomas D. Samford, United States Attorney; Samuel O. Clark, Jr., Assistant Attorney General, Attorneys for the Plaintiffs. Thomas S. Lawson, At-

torney General of the State of Alabama; John W. Lapsley, Assistant Attorney General of the State of Alabama; J. Edward Thornton, Assistant Attorney General of the State of Alabama, Attorneys for John C. Curry, Individually and as Commissioner of Revenue of the State of Alabama.

EXHIBIT "1" TO AGREED STATEMENT OF FACTS

Request No. 5689

Date 1-15-41

Dunn Construction Company
and

John S. Hodgson & Company

Request for Purchase

To: Purchasing Agent.

It is requested that the following be purchased for use as indicated:

(Signed) Thos. G. Walmsly, by C. H. Strawn.

Item No.	Quantity	Unit	Article	Job No.	Bids Received 3 Price
1	125	Rolls	Prepared Roll Roofing, Mineral Surface, Color, Green Wt. Approx. 95# per roll @ 1.81 each	1-3211	226.25
For Hospital Area					
Deliver to General Warehouse					
Certified a true copy.					
Thomas H. Doyle, Captain QMC					
2% 10					
					\$226.25 PH

[fol. 71]

Bidders

Name

Address

1. Certainteed Prod. Corp.
Approved for purchase.

Atlanta, Georgia

Issue purchase orders as indicated
above.

(S) Thomas H. Doyle, Capt. QMC

(Stamped) Raymond P. Reeves
Purchasing Agent

For: S. C. MacIntire, Jr.
Major, QMC

Constructing Quartermaster

EXHIBIT "2" TO AGREED STATEMENT OF FACTS

Dunn Construction Co., Inc.

and

John S. Hodgson & Company
Contractors

Fort McClellan, Ala.

P. O. No. 2361

Req. No. 3589

Date January 16, 1941.

To Certainteed Products Corporation.

Address, Atlanta, Georgia.

Please enter the following order in accordance with the conditions and terms of your accepted bid and/or contract dated — — —, and in conformity with conditions and instructions on the reverse side.

Item No.	Description	Quantity	Unit	Unit Price	Amount
1	Prepared Roll Roofing, Mineral Surface, Color Green, Weight approximately 95# per roll	125	roll	1.81	\$226.25
	Total				\$226.25

Certified, A true copy.

Thomas H. Doyle
Captain, QMC

Ship to: United States Constructing Quartermaster
At: Fort McClellan, Ala.

For account of Dunn Construction Co., Inc., and John S. Hodgson & Co.

Ship by Best Way Via — F. O. B. Fort McClellan, Alabama.

Terms: Net — Days, less 2% 10 Days. Shipments must start by and be completed by Immediately, Mark Packages, Cases, Etc., with above Purchase order Number, Special Number of Each Package, weight of Each package, Vendor's name, and the following special Markings. General Warehouse.

RPR;fm.

Important; See reverse side of this Sheet

Dunn Construction Co. Inc. and John S. Hodgson & Co., (S.) Raymond P. Reeves, Purchasing Agent.

[fol. 72] (reverse side of invoice)

This order is placed for the benefit of, and is assignable, to the United States Government.

This Purchase Order does not bind, nor purport to bind, the United States Government or Government officers thereunder.

Terms of Payment as stated on obverse side of this Purchase Order are understood to be effective upon arrival at destination and acceptance of material by properly accredited U. S. Government officers or representatives having jurisdiction over same and of properly executed Bills of Lading (or shipping papers) and receipt of certified invoice.

The following Instructions must be followed Explicitly:

1. Acknowledge receipt of this Purchase Order. Unless acknowledged Immediately we reserve the right to cancel.

2. Immediately upon shipment made to Dunn Construction Co. Inc., and John S. Hodgson & Co., at Fort McClellan, Ala.

A. Original and Two (2) copies of Bill of Lading (or shipping papers) Bills of Lading, etc., must read:

UNITED STATES CONSTRUCTING QUARTERMASTER

At Fort McClellan, Ala.

Account of Dunn Construction Co., Inc., and John S. Hodgson & Company. and must also bear Purchase Order Number.

B. Six (6) copies of invoice, properly filled and certified as follows:

I certify that the above bill is correct and just; that payment therefor has not been received; and that except as noted below or otherwise indicated herein all unmanufactured articles, materials, or supplies furnished under this invoice, have been mined or produced in the United States and all manufactured articles, materials or supplies have been manufactured in the United States substantially all from articles, materials or supplies mined, produced, or manufactured, as the case may be, in the United States; and that State or local sales taxes are not included in the amounts billed.

— —, Title.

3. Render Separate invoices for each and every shipment.

4. Make no changes in filling this Purchase Order as to quantities, descriptions, prices, f. o. b. points, etc., except upon direct authority from our Purchasing Department.

[fol. 73] 5. Immediately upon shipping mail to the contractor 3 copies of tally and shipping memo; enclose tally or shipping memo in each package or tack same inside each car door.

Full Compliance With the Above Will Expedite Payment.

EXHIBIT "3" TO AGREED STATEMENT OF FACTS

Receiving and Inspection Report

Date Received 1-20, 1940 via Frt.

(?)

Vendor *Certainteed Products Shipped from Atlanta Ga.

Car No. Sou 19375

Quantity	Unit	Description
125	Rolls	90# Lawn Green Roofing

*Certainteed Products Corp., Savannah, Ga.

Certified

A True Copy

Thomas H. Doyle,

Captain, QMC

Constructing Quartermaster

(S.) Fred McNaron

Received by

(2) A. L. Arendale

Checker

P. O. No. 2361 Date 1-16, 1941 Checked by H

Invoice No. 4623 Date 1-20, 1941 Checked by H

EXHIBIT "3A" TO AGREED STATEMENT OF FACTS

Receiving and Inspection Report

Date Received 1 194

Vendor Certainteed Products Corp—Campbell Coa Co. Shipped from Atlanta, Ga.

Car No. Sou 13975

S #1

Location	Quantity	Unit	Description
General Warehouse	125	Rolls	Green Roofing

General

Warehouse

125

Rolls

Green Roofing
90 Lbs. to Roll

Certified a true copy

Thomas H. Doyle, Captain, QMC

Received, Inspected & Accepted (except as noted)

Date 1/20/41 — Signed B. W. L., Storkeeper — Area No. L

[fol. 74]

Received by: Inspected by
 (s) Fred McNaron (s) E. L. Arendale
 Checker Inspector

P. O. No. 2361

EXHIBIT "4" TO AGREED STATEMENT OF FACTS

Certain-Teed Products Corporation
 100 East 42nd Street
 New York, N. Y.

Original

Invoice No. 4623
 Page 129
 Entered Line 27
 By R.

256-003

Sold to: Dunn Construction Co., Inc. &
 John Hodgson & Co. 2
 Ft. McClellan, Ala. 1

Invoice Date Jan. 20, 1941

Ship to Same—S/O at Atlanta Ga.

Ordered 1/16

Nifty—Campbell Coal Co.

Your N6. P. O. 2361 S. O. No. at 300 Salesman 8216 Johnson Shipt From Pt. Went 7

Terms 25 10 days net 30 days Car No. Sou 13975 Date Shipt 1/16
 Route S & A Ga. Invoice No. 3999

F. O. B. Pt. Wentworth—full frt alld & ppd

Quan- tity	Unit	Commodity	Com. Code	Weight	Price	Amt. Total
125	Rls	To come out at Dest— 90# SLT RFG—CPTE 1 Gr • to meet Fed. Specs— SS-R-521	11612	11375	1.81	226.25
			Less 2% discount			4.53
			Net amount Paid			\$221.72

Shipt with order # 72006-72001-22-25
 (4000)

I certify that the above bill is correct and just; that payment therefor has not been received; and that except as noted below or otherwise indicated, herein all unmanufactured articles, materials or supplies furnished under this invoice have been mined or produced in the United States and all manufactured articles, materials or supplies have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States; and that State or local sales taxes are not included in the amounts billed.

Firm Name Certain-Teed Products Corporation, Per (s) S. J. Wood
Dist. Credit Manager

Certified a true copy

P. O. No. 2361
Purpose No. 3211 Amt. 221.72
QM-7085

Thomas H. Doyle, Captain, QMC

Certified Correct
J. P. Anderson
Chief Fiscal Accountant

[fol. 75]

Field Audit

Quantity checked by D.B.W.

Prices checked by D.B.W.

Extensions checked by H.

Entered:

on Purchase order by D.B.W.

On Inv. Register by W. J. W.

Approved for \$221.72

By Signed B. B. Uhler, Chief Material Inspector.

By Signed E. D. Proctor
Field Auditor

EXHIBIT "5" TO AGREED STATEMENT OF FACTS

Dunn Construction Co. Inc.

And

John S. Hodgson & Company

No 138

Invoice Transmittal

Date February 20th, 1941

To: Constructing Quartermaster
Attention of Field Auditor

The following invoices are submitted herewith for approval of payment:

Invoice No.	Date	P. O. No.	QM 7065 Vendor	Amount
1599	9-26-40	35	Matthews Electric Supply Co.	43.00
3461	9-26-40	35 81	"	423.60
2807	11-26-40	965	Noland Company	884.89
2945	12-6-40	665	"	143.29
3358	12-24-40	1212	"	73.05
3990	12-31-40	2383	"	36.02
4283	1-18-41	2466	"	5.00
4284	1-18-41	2286	"	28.56
4468	1-25-41	2205	"	101.28
4473	1-27-41	2284	"	23.55
4547	1-31-41	2359	"	47.75
4597	12-31-40	2284	"	.75
4652	1-29-41	1021	"	3.39
4640	2-7-41	2359	"	8.25
4669	2-12-41	2246	"	372.85
4670	2-12-41	2467	"	41.65
4671	2-12-41	2380	"	9.90
4692	2-12-41	2244	"	905.20
1908	10-14-40	1380	John B. Lagarde, Jr.	23.00
2485	10-21-40	561	"	8.50

[fol. 76]

4237	9-30-40	44	John B. Lagarde, Jr.	20.25
4238	10- 8-40	44	" " "	73.70
4239	10-10-40	44	" " "	250.58
4240	10-14-40	44	" " "	73.70
4241	10-15-40	44	" " "	44.22
4242	10-16-40	44	" " "	51.59
4243	10-19-40	44	" " "	16.00
4244	10-22-40	44	" " "	14.74
4245	10-25-40	44	" " "	16.00
4246	10-30-40	44	" " "	16.00
4247	11-14-40	44	" " "	16.00
4435	11- 5-40	44	" " "	436.00
1706	10-31-40	1035	J. D. Pittman Tractor Company	326.17
2910	12- 1-40	1390	Henry H. Booth	19.85
4623	1-20-41	2361	Certain-teed Products Corp.	226.25
4629	11- 6-40	1065	Callahan Grinding & Machine Co.	2.75
4697	2-15-41	2295	Birmingham Slag Company	431.20

Certified a true Copy

Thomas H. Doyle

Total

5,249.68

Previous Totals Accumulated

1,771,998.34

Accumulated Totals to Date

1,777,243.02

Received the Above Invoices

Constructing Quartermaster
(Signed) W. H. Morton, Jr.Dunn Construction Co., Inc.
and John S. Hodgson & Co.
(Signed) J. P. Anderson

EXHIBIT "6" TO AGREED STATEMENT OF FACTS

U. S. War Department

Voucher No. 763

Voucher prepared
at Fort McClellan, Ala. 3-5-41D. O. Vou. no. 1474
Bu. Vou. No. 763

The United States, Dr.

To Dunn Construction Co., Inc., & John S. Hodgson & Co.
Address Fort McClellan, Alabama.

Balance brought forward

Total

Amount
9,465.76
9,465.76

[fol. 77]

Certified

A True Copy

Thomas H. Doyle, Captain, Q.M.C.

I hereby certify that the above bill is correct and just; that payment therefor has not been received; and that except as otherwise noted all of the articles, materials, and supplies furnished under purchase order No. — if unmanufactured articles, materials, and supplies, have been mined or produced in the United States, and if manufactured articles, materials, and supplies they have been manufactured in the United States substantially all from

articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States; and that State or local sales taxes are not included in the amounts billed.

Payee Dunn Construction Co. Inc. & John S. Hodgson & Co.

Per (S.) H. A. Gholson, Title Chief Accountant.

Contract No. W-6119 qm-161. Date 9-9-40.

Pursuant to authority vested in me, I certify that the above articles were received in good condition, after due inspection, acceptance, and delivery prior to payment as required by law, or the services were performed as stated; that they were propounded under the contract numbered above or the unnumbered contract attached hereto, or that they were procured without writtin contrast, in open market, and with or without advertising, under the circumstances stated in No. — of "Method of or Absence of Advertising" shown on reverse hereof, and were necessary for the public service; and that the prices charged are just and reasonable and in accordance with the agreement.

(W.) Wm. H. Ball, Major, Q. M. C., Title Constructing Quartermaster.

Approved for \$9,465.76. (S.) E. D. Proctor, Field Auditor.

Accounting Classification

Appropriation, limitation or project symbol	Limit'n or Proj't amount	Appropriation Amount
21x1738	9,465.76	9,465.76
Construction of Buildings; Utilities and Appurtenance at Military Post; Emergency Construction. No. year. (See form 35-A attached.)		

[fol. 78]

Public Voucher for Purchases, and Services
Other Than Personal

Continuation Sheet

U. S. War Department:
Our Invoice No.

944	Moore Handley Hardware Co.....	136.37
1451	Delrymple Equipment Co.....	53.38
3455	Stoelker Equipment Co.....	102.00
4153	The Goodyear Tire & Rubber Co.....	4.50
4468	Noland Company, Inc.....	99.25
4547	Noland Company, Inc.....	46.79
4391	J. D. Pittman Tractor Co., Inc.....	133.80
4623	Certain-teed Products Corporation.....	221.72
4640	Noland Company, Inc.....	8.08
4653	The Young and Vann Supply Co.....	22.33
4662	Philadelphia Tranrail Co.....	7,573.50
4672	Noland Company, Inc.....	103.21
4675	Anniston Machine Works.....	16.07
4697	Birmingham Slag Co.....	431.20
4702	Birmingham Slag Co.....	136.76
4703	The Geo. F. Wheslock Co.....	17.46
4709	John B. Lagarde, Jr.....	108.04
4710	John B. Lagarde, Jr.....	39.87
4711	John B. Lagarde, Jr.....	48.51
4714	John B. Lagarde, Jr.....	6.86
4715	John B. Lagarde, Jr.....	49.73
4716	John B. Lagarde, Jr.....	13.72
4717	John B. Lagarde, Jr.....	79.38
4718	John B. Lagarde, Jr.....	22.05

Certified a True Copy

Thomas H. Doyle, Capt. Q.M.C.

Total

9,465.76

Analysis of Vouchers

Appropriation Title

21x1738—Construction of	Qm-7085	P1-3211	A1738N	8,571.91
Buildings, Utilities and	QM-7085	P1-3212	A1738N	877.78
Appurtenances at Military Posts.	Qm-7085	P1-3213	A1738N	16.07
Emergency Construction. No. Year.				

[fol. 79]

Certified a True Copy

Thomas H. Doyle Capt. Q.M.C.

[fol. 80] IN CIRCUIT COURT OF MONTGOMERY COUNTY

Statement of Evidence

MAJOR S. C. MACINTIRE, JR., being first duly sworn, testified as follows:

Direct examination.

By Mr. Mickey:

Q. Will you state your name, please?

A. S. C. MacIntire.

Q. Your age, please, sir?

A. Fifty-one.

Q. Your present residence?

A. Decatur, Georgia.

Q. Your present occupation?

A. Soldier.

Q. With what part of the Army are you connected?

A. Quartermaster Corps.

Q. How long have you been with the Quartermaster Corps?

A. Since last August.

Q. What capacity do you hold with the Quartermaster Corps?

A. You mean rank, or do you mean——

Q. (Interposing): Job.

Mr. Green: Rank and duties.

Q. Rank and duties?

A. I was assigned to Constructing Quartermaster, as a Major. This just covers this present active-duty period, see?

Q. You are Constructing Quartermaster on what job?

A. Now?

Q. Then?

A. Fort McClellan.

Q. Did you know Mr. John Hodgson?

A. Yes.

Q. Did you deal directly with him while you were Constructing Quartermaster at Fort McClellan in connection with the performance of this contract which Dunn Construction Company, Incorporated, and John S. Hodgson & Company had with the Government for the construction of a tent camp and other buildings at Fort McClellan?

A. Yes.

Q. I hand you a document marked Exhibit A and ask you if you have ever seen that document, or a copy of it, before?

A. Yes. This is the guide and instructions to Constructing Quartermasters covering fixed-fee project operation.

[fol. 81] Q. How did you come into possession of this?

A. It was forwarded to me by the Quartermaster General's office in Washington, for distribution on the job.

Q. By whom was it prepared and issued?

A. Issued by the Quartermaster General in the Construction Division. And it came to my office—those forms came

to my office, I believe either five or six copies; and we were instructed to distribute them to the contractor and to the architect-engineer, so we were all conversant with the instructions.

Q. Did you deliver one of the copies to the constructing contractors on the job at Fort McClellan?

A. Yes; to the contractors and to the engineers, both.

Q. Did you, in your capacity as Constructing Quartermaster, follow the directions and procedures which are set forth in this "Supplement to guide for Constructing Quartermasters"?

A. I believe—

Mr. Lapsley (interposing): Your honor—

The Court: Hold just a second. What is the ground of objection?

Mr. Lapsley: We object to that question specially on the ground that it calls for incompetent, irrelevant and immaterial testimony, conclusion of the witness—

The Court (interposing): Can you out-talk that fan just a little bit?

Mr. Lapsley: Incompetent, irrelevant, immaterial, and calls for a conclusion of the witness; and, further, that it calls for evidence which is not pertinent to any issue in this case; and, another ground, that it is an attempt to alter or vary the terms of a written contract, by parol.

The Court: I will let it in and give you an exception to the Court's ruling. Now you can answer it.

Witness: Do I—

The Court: You can answer now.

Witness: Answer the question?

The Court: Yes.

A. Well, as nearly as it was possible to follow this, but the Constructing Quartermaster is given discretionary powers in certain things to make routine decisions, which I exercised in many cases.

Q. But that power of discretion that you exercised is given you in these instructions?

A. That's right. The authority is in there. I didn't have to run to Washington with every decision that I made.

[fol. 82] Q. How long did the instructions that are set forth in this Guide remain in force and effect?

A. Well, now, that leads me off on what I was trying to say: That was in effect until these came out, but I didn't

want the impression to go into the record that there were no other instructions that came out in the interim.

Q. What other instructions came out in the interim?

A. Well, it is continuous. These Construction Division letters come out continuously, probably a dozen a week or more, and they are in some cases instructions on things that have nothing to do with the manual; but, however, I didn't want you to get it in the record that stopped everything until this came out. You see, there's also zone letters that come out, that are instructions, as things develop.

Q. The instructions that you say came out from time to time were all incidental in nature?

A. Oh, yes; or they could have been on lump-sum contractors, or anything.

Q. But they did not change substantially the procedures—

A. (interposing): Not at all. Not at all, no. But you see in your original question to me you asked me apparently whether there was a gap of any kind between these two, and there was.

Q. When was the new Manual for the Construction Division, Office of the Quartermaster, with instructions to Constructing Quartermasters, issued?

A. It was issued under the date of March 19, 1941.

Mr. Mickey: I offer in evidence Exhibit A, entitled "Supplement to Guide for Constructing Quartermasters, revised 1940, covering fixed fee projects", dated August 27, 1940.

Mr. Lapsley: We wish to object to the introduction of this document.

The Court: Why don't you do this: Follow this rule: Unless you specially object—

Mr. Lapsley (interposing): I will put my grounds in.

The Court: Yes, put your grounds in, and any other grounds, if you don't assign any.

Mr. Green: It will stand on that same objection. The objection shows it relates to all of them.

The Court: Well, it is in.

Mr. Thornton: Judge, did we understand you overrule the objection?

The Court: Yes.

Q. Major MacIntire, I hand you a document marked Ex-
[fol. 83] hibit B, entitled "Fixed Fee Letter No. 5", and ask

you if you have ever seen that letter, or a copy of that letter, before?

A. Yes. This is a circular letter that came out to all Constructing Quartermasters.

Q. From whom?

A. From the office of the Quartermaster General, and it is signed by Captain Kirkpatrick, who was at that time an assistant in the Fixed Fee Section.

Q. This is an illustration of the type of letter which you say came out—

A. (interposing): That's correct.

Q. (continuing): * * * in addition to the—

A. (interposing): That's correct.

Q. (continuing): * * * instructions in the Guide. Approximately when did that document reach you? When did you receive a copy of that?

A. Well, it would be difficult for me to fix the date. I'm surprised that this isn't dated.

Q. Approximately?

A. Well, I would say it must have come out in October. About October of 1940.

Q. Did you receive copies of that which were transmitted by you to Dunn Construction Company, Incorporated, and John S. Hodgson & Company, in your capacity as Constructing Quartermaster?

A. I can't answer that question, because I don't know. The procedure would have been, yes. But whether that was actually delivered, I have no way of knowing. I have no receipt for them.

Q. But in the usual course of routine, you would have received copies of that—

Mr. Green: He answered that question. He said yes, he would have in normal course delivered it.

Witness: Yes.

Mr. Mickey: I offer in evidence Exhibit B.

Mr. Lapsley: You got a B on it?

The Court: Yes.

Mr. Thornton: We object to it. Reserve the right to assign grounds.

The Court: Yes. Same ruling and same exception.

Q. I show you exhibit marked Exhibit C, entitled "Construction Division Letter No. 101", dated February 19, 1941—

A. (interposing): That's correct, yes.

[fol. 84] Q. (Continuing:) —and ask you if that is a copy of letter you received from the office of the Quartermaster General in Washington, D. C.?

A. That's correct.

Q. In your capacity as Constructing Quartermaster and—

A. (Interposing): May I interrupt? I wasn't at Fort McClellan when this letter was received. I received this letter in Atlanta at my present assignment. You see, I reported there the 18th of February. This is the 19th of February.

Q. This is a general letter which you would have received?

A. That's right. You see, this went to all Constructing Quartermasters. You see, Captain Doyle was there when he got that. He relieved (witness stopped).

Mr. Green: Have you any questions, Mr. Lapsley?

Mr. Lapsley: No.

Witness excused.

CAPTAIN THOMAS H. DOYLE, being first duly sworn, testified as follows:

Direct examination.

By Mr. Mickey:

Q. Will you state your name, please?

A. Thomas H. Doyle.

Q. You are at present Constructing Quartermaster at Fort McClellan?

A. Yes.

Q. Have you ever seen a copy of this document, marked Exhibit C?

A. Yes.

Q. Have you applied the instructions and directions given to Constructing Quartermasters thereby at Fort McClellan?

Mr. Lapsley: We object to that.

Mr. Green: And to—wait; let him finish the question. And—

Q. And to Dunn Construction Company, Incorporated, and John S. Hodgson & Company?

A. Yes.

Mr. Lapsley: We object to that.

The Court: Yes. Same ruling. Same thing.

Mr. Green: Now introduce it in evidence.

[fol. 85] Mr. Mickey: I offer Exhibit C in evidence.

Mr. Green: That's all, Captain.

Mr. Thornton: And we have an exception. We object.

The Court: Yes.

Mr. Thornton: We object, with leave to assign all grounds applicable.

The Court: Oh, yes.

Witness excused.

Mr. JOHN S. HODGSON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Mickey:

Q. You are John S. Hodgson, age thirty-eight, one of the partners of John S. Hodgson & Company, which is associated with Dunn Construction Company, Incorporated, as a partner, or co-venturer, in a contract dated September 9, 1940, a copy of which is attached to the petition for a declaratory judgment filed in this case?

A. Yes.

By Mr. Green:

Q. In the course of the performance by Dunn Construction Company and John S. Hodgson & Company of that contract, did you, in the behalf of the co-venture, receive, through the Constructing Quartermaster on duty at that Post, copies of the documents which I hand to you, and which are marked, respectively, Exhibit A, Exhibit B, and Exhibit C?

A. Yes.

Mr. Mickey: That's all.

Mr. Green: Wait a minute. No, it is not all.

Q. Why were these documents, if you know, delivered to you by the Constructing Quartermaster?

Mr. Lapsley: We object to that.

Mr. Green: Understand that. Understand that.

Mr. Thornton: We object to that, with leave to assign grounds—is that the same agreement—

The Court: Yes. Same rule.

Mr. Thornton: All right. With leave to assign grounds.

[fol. 86] The Court: Any additional grounds you want. All right. You can answer.

A. Because they pertain to the operation of this contract.

Q. Whose operation?

A. They pertain to the operation of the Constructing Quartermaster, the engineers, and the contractors.

Q. And by contractor you mean particularly to the co-venture of Dunn Construction Company, Incorporated, and John S. Hodgson & Company, in the performance of its contract of September 9, 1940, which has been mentioned above?

A. Yes, sir.

Q. Did you apply the instructions contained in those several exhibits to your operations, in the performance of your contract?

Mr. Lapsley: We object.

The Court: Same ruling. Let it in, and you have an exception.

A. We did.

Q. I hand you what purports to be—I hand you a photostatic copy of what purports to be a conference held with the Dunn Construction Company and John S. Hodgson & Company in Room 2241, Munitions Building, Washington, D. C., on September 6, 1940, between Mr. Dunn and yourself; and Lieutenant-Colonel E. G. Thomas and Mr. Loving and Mr. O'Brien, all representing the Government, relative to the construction of Camp McClellan, Alabama, and ask you if you have ever seen—if that is a true copy of any paper which you have ever seen?

Mr. Lapsley: Now, we object to that question.

The Court: Overrule it and give you an exception. I presume it is a true copy?

A. I haven't read it in detail, but I remember the conference.

The Court: So far as you know—

Witness (Interposing): In my opinion, it is a true copy.

Q. In your opinion, it is a true copy of that conference?

A. Yes, sir.

Q. You know why the conference was held?

Mr. Lapsley: We object to that.

The Court: "Know *why* the conference was held"?

Mr. Green: Yes, sir.

The Court: Overrule and let it in, and give you (Mr. Lapsley) an exception.

A. For the purpose of discussing a proposed contract for [fol. 87] the construction of the camp at Camp McClellan.

Q. And by that proposed contract, you mean a proposed contract to be entered into by Dunn Construction Company and John S. Hodgson & Company with the United States?

A. Yes, sir.

Q. Was such a contract consummated pursuant to this conference?

Mr. Lapsley: We object.

The Court: Overrule, and give you an exception.

A. It was.

Q. Is that the contract which you have seen filed in this case as an exhibit attached to the petition for a declaratory judgment, filed in your name and in the name of the United States?

A. Yes, sir.

Mr. Green: We introduce this in evidence and mark it Exhibit D.

Mr. Lapsley: And we object to the introduction of this, on like grounds, and everything—

The Court (Interposing): Yes.

Cross-examination.

Mr. Lapsley:

Q. I want to ask you, Mr. Hodgson, as nearly as you can state, when did you receive copies of the papers referred to and marked as Exhibits A, B and C?

A. During the course of construction. The first of these began coming out immediately after the job started, and the letters—at different times during pretty—at pretty regular intervals throughout construction.

Q. You mean after you had signed the contract and started to perform this work?

A. Yes, sir.

Mr. Thornton: Now, Judge, we would like to renew our objection at this time, and further make a motion to exclude, because it obviously appears that this is an effort to vary the terms of the written contract.

The Court: Same ruling, and same exception.

Mr. Green: I ask this question. I am not as familiar with Alabama practice as our friends here.

Mr. Lapsley: Same as Virginia.

Mr. Green: No. These papers appear to be copies. They are merely photostats, and not originals.

Mr. Lapsley: We make no objection as to whether they [fol. 88] are true copies.

The Court: Just consider them as being originals, if you want to.

Mr. Lapsley: Each one treated as originals.

Mr. Green: I want to make that statement, because if any point is taken on that, we submit a willingness now to submit duly authenticated copies.

The Court: No point on that.

Mr. Lapsley: No point on that. We concede they are copies.

Redirect examination.

By Mr. Mickey:

Q. I hand you a letter dated February 8th and marked Exhibit E, and ask you if you received that letter from the Constructing Quartermaster?

A. We did.

Mr. Mickey: We offer that Exhibit E in evidence.

Mr. Thornton: Is there something else here going in?

Mr. Mickey: Yes.

Mr. Lapsley: I didn't get through looking at all these exhibits.

Mr. Thornton: And we object to that.

The Court: Yes; and the same ruling.

Mr. Mickey: I will give you a copy.

Mr. Lapsley: Is that Exhibit E?

Mr. Mickey: That's right.

Mr. Lapsley: We object to this.

The Court: Yes. Same objection, same ruling.

Q. I hand you two papers, marked Exhibits F and G, which are letters dated November 12, 1940, and November 14, 1940, from the Constructing Quartermaster to Dunn Construction Company, Incorporated, and John S. Hodgson & Company, Fort McClellan, Alabama, and ask you if you have ever seen copies of these exhibits?

A. Yes, I have seen copies.

Q. Were the instructions given by the Constructing Quartermaster therein, followed?

A. Yes.

Mr. Mickey: I offer these Exhibits F and G in evidence.

Mr. Thornton: And note our objection, please.

The Court: Yes.

Q. I hand you a letter marked Exhibit H, dated February 17th, to the Constructing Quartermaster at Fort McClellan, Alabama, from the Project Manager of Dunn [fol. 89] Construction Company, Incorporated, and John S. Hodgson & Company, and ask you if you have seen a copy of that letter?

A. I may not have seen a copy of this particular letter.

Q. I ask you if that was a copy of a letter?

A. Wait. I may not have seen this particular letter.

Q. I ask you if that was a copy of a letter sent by Dunn Construction Company, Incorporated, and John S. Hodgson & Company, to the Constructing Quartermaster?

A. I don't remember the instance. I didn't handle that personally, but I presume it is. The man had authority to write for us—Mr. Stout.

Q. I hand you a letter marked Exhibit I, and ask you if that is a reply to said letter?

A. Yes, sir.

Mr. Thornton: Are you offering all those?

Mr. Lapsley: We object. Well, he has not offered them yet.

Mr. Thornton: Are you offering those in evidence?

Mr. Mickey: I am offering these two documents, Exhibits H and I.

Mr. Thornton: And we object to them. Object to each of those, separately.

Mr. Lapsley: Object to them.

The Court: Yes.

Mr. Mickey: That's all.

Witness excused.
 Testimony closed.

[fol. 90]

EXHIBIT "A"

**Supplement to Guide for Constructing Quartermasters
 Revised 1940
 Covering Fixed Fee Projects
 Office Quartermaster General**

August 27, 1940.

Note: The Matter Contained in the Following Pages is Intended as General Information only to Aid the Constructing Quartermasters and Their Assistants in Connection with Fixed-Fee Contracts Covering Construction Work.

40/1354

General

The following instructions pertain to supervision of work under Fixed Fee Contracts—

1. The information contained in the Guide for C. Q. M's. as revised in 1940 is, in general, applicable to construction work being performed under either a lump sum or a Fixed Fee Contract, as are the Army regulations and other War Department documents mentioned therein. The laws, this Guide, Army Regulations, and other instructions have been and will be altered from time to time and it is the responsibility of the Constructing Quartermaster to keep himself and his office informed concerning the laws and regulations under which he must operate.

2. Appended hereto is a chart showing the recent reorganization of the Construction Division O. Q. M. G.

Constructing Quartermaster:

3. All Constructing Quartermasters in the field have been [fol. 91] supplied with certain Army regulations, Federal Specifications, and other pertinent circulars and instructions or will be furnished same upon request. Any special regulations, circulars, etc. desired in addition to these should be requested by letter to this office.

4. First. In emergency construction for defense purposes, the most important element is time of completion. Speed is Essential.

5. Second. It is the duty of all Officers to see that all money is wisely and honestly expended.

6. Third. Each Constructing Quartermaster is responsible for the satisfactory completion of the job under his direction. He is expected to exercise initiative and to appreciate that he is directly responsible to the Chief of the Construction division for his operations. The Washington Office of the Construction Division will furnish Constructing Quartermasters information as to the requirements to be met, and the Constructing Quartermaster's primary duty is to fulfill these requirements and to keep the Washington Office informed by all the regular reports and by any special reports or letters considered necessary.

7. Fourth. The Engineering Branch, O. Q. M. G., will observe and review the technical features of the work of the Engineer-Architect so far as necessary and practicable without in any way delaying the progress of construction. To that end, the Constructing Quartermaster will as rapidly as possible, submit to this office, in duplicate, sketches, preliminary drawings and other data in sufficient detail to present clearly the dimensions, materials, capacities, structural features, architectural treatment and other elements proposed to be used. If the data submitted are unsatisfactory in any material degree, the Constructing Quartermaster will be notified by telephone or geograph, and will order such revisions which are at that time practicable.

8. Fifth. A Procurement and Expediting Branch has been established in the Construction Division of the Office of the Quartermaster General to centralize the purchasing and the mobilization of materials required in construction. If it appears that the normal methods of procuring and delivering material may break down to such an extent that a project will be delayed, this office should be advised immediately giving full particulars.

Special Instructions Regarding Correspondence:

9. In the following instructions "this office" refers to [fol. 92] the Construction Division which is a division of the Office of the Quartermaster General.

10. The form of address for mail shall be:

The Quartermaster General
Washington, D. C.

11. All correspondence to this office relative to construction on a Fixed Fee Basis will have the words (Fixed Fee Branch) immediately following the subject; example,

Subject: Test Portland Cement, Springfield Arsenal
(Fixed Fee Branch) Telegrams or radios should be addressed:

The Quartermaster General
Washington, D. C.

12. Each telegram to be consecutively numbered at the end thereof; Number First telegram "1" with prefix C. F. for Construction Branch Fixed Fee and then the number of the telegram or radio followed by E for the engineering branch of the Constructing Quartermaster Office.

Example: "The Quartermaster General
Washington, D. C.

C-Eight-N E Report forwarded today. C.F. One-E
Jones"

13. Every project in the field will be assigned to a Chief of Section in this office through whom all matters relating to the project will pass.

14. Depending upon the size of the project, a number of Commissioned Assistants will be ordered to report to the Constructing Quartermaster for duty. These Officers may be utilized in positions such as Executives, Property Officers, and as the Engineering representatives, etc. of the Constructing Quartermaster on the work.

15. Where necessary and considered advisable by the Constructing Quartermaster additional civilian engineering and other personnel may be employed—in accordance with regulations after obtaining the authority of this office for their employment.

16. The Constructing Quartermaster will utilize the Engineering Contractors and the Constructing Contractors engineering and other forces to the fullest extent.

17. A Field Auditor will be assigned to duty under the Constructing Quartermaster. He will be responsible for

the employment of all necessary assistants, subject to the Constructing Quartermaster's approval, and for the faithful performance of all their duties. The duties and procedure of the Field Auditor and his assistants are defined in detail below.

18. The C. Q. M. may designate any of his Commissioned Assistants as property officers. The C. Q. M. will be jointly responsible with his Property Officers and they will inform themselves as to their responsibility and keep all necessary accounts as provided by Army Regulations, and property accounts will be kept as described therein, for which purpose he may utilize his Auditing Staff. All regulations as to bonds will be complied with.

19. When the construction is being performed by the Construction Division for some branch of the War Department other than the Quartermaster Corps, an Officer from another branch of the War Department may be assigned as the Constructing Quartermaster or as his assistant. It must be clearly understood that the authority of the Construction Division is paramount, in all matters whatever pertaining to the work and the C. Q. M. is the representative of the Quartermaster General at the site of the work.

Duties of the Constructing Quartermaster:

20. The Constructing Quartermaster should read the contracts until he has become thoroughly familiar with it, and at frequent intervals read it again. He should also insist that the contractor do the same. Many unnecessary questions and much correspondence will thereby be avoided.

21. Before making or authorizing any expenditures upon the work, the Constructing Quartermaster shall first ascertain that he is authorized by this office to do so. It will be necessary at times, to begin work before plans are completed, and on verbal instructions as to the engineering features, but the Constructing Quartermaster will see that he is furnished at the earliest moment all necessary plans, specifications, and other data, and he or his representatives will advise the contractors fully as to the character of the work and the general order and manner of prosecuting it. Any verbal instructions necessary will be confirmed in writing for the protection of the Government and the Contractors.

22. The Construction Quartermaster will be responsible for the conduct of the work in accordance with the plans and specifications, these instructions and such special instructions as he may receive from this office from time to time. He will not depart from such instructions or data to any important extent without the written consent of this office, but he will be expected to make such minor changes as in his judgment are clearly necessary in the interest of expedition, quality or economy, and as to which time does [fol. 94] not permit this office to be consulted in advance. He will, however, advise this office of any such changes as promptly as possible.

The Contractor:

23. The selection of the contractors for a fixed fee contract implies, in general, confidence in his capacity, specific experience and the possession of an adequate working organization, plant and plan of operation. In case the Constructing Quartermaster shall become convinced that the contractor is deficient in any of these respects, it shall be his duty to remedy the deficiency by suggesting necessary changes or additions be made in the contractor's organization or methods or if the deficiency be serious, to consult this office without delay as to what steps should be taken.

24. Assuming the possession of an adequate organization and plan of operation by the contractors, it is understood that they will conduct the work in accordance with their usual methods, except so far as may be necessary to comply with the requirements of this office, and subject, always, to the Constructing Quartermaster's approval.

25. The contractors shall provide such superintendents, engineers, accountants, clerical help, timekeepers, material checkers, etc., as are needed to properly conduct the work, subject to the approval of the Constructing Quartermaster. He will be responsible for the employment of all necessary men, teams, and plant, and for the efficiency of all of his representatives, assistants, and employees. It will be his duty to promptly check all plans and specifications which may be furnished him. Schedules of materials may be furnished the contractor for his assistance in preparing his own lists, but he must always understand that his responsibility for prompt, full and accurate bills of material is in

no way modified by any such information, which is given solely in order to get delivery of materials started at the earliest moment.

26. It is the policy to contract on a Fixed Fee basis, for the services of Architects and Engineers as well as for construction work and this guide will apply to both types of contracts.

Materials and Equipment:

27. In purchasing material by the contractor the purchase order must always be first approved by the Constructing Quartermaster.

28. It is expected that the contractor will already have a large portion of the plant to handle the work. When a contract is awarded, the contractor shall submit to the Constructing Quartermaster, a list of the plant needed for the [fol. 95] work. The Constructing Quartermaster shall submit this list to this office and this office will furnish from available plant already owned by the Government, such items as are on hand, and shall authorize the contractor through the Constructing Quartermaster, to furnish the balance. Such plant and material, as may be necessary and available in the local markets for conducting the early operations prior to the arrival of material ordered on regular schedule, should be located by the contractor at once, and may with approval of the Constructing Quartermaster be ordered locally. A schedule of allowable rentals will be included in each construction contract.

Funds:

29. The Constructing Quartermaster should note that immediately upon acceptance of materials, they become the property of the Government under the contract. He must be prepared to reimburse the contractor promptly upon his material vouchers, to take advantage of all cash discounts. A preliminary allotment of funds to start the work will be made by this office and thereafter it shall be the duty of the Constructing Quartermaster to make the necessary request for the necessary additional funds not exceeding the amount set aside for the project in this office.

Contracts and Sub-contracts:

30. The formal contracts for this work will be executed by the Officer in charge of Construction Division. The terms and conditions under which sub-contracts can be entered into are fixed by the general contract. Forms for such sub-contracts will be furnished by this office. Sub-contracts, except for plumbing, steam heating, electrical work, and other work that can be done more economically by specialized working forces, should not be entered into unless it is found that completion of the work can be materially hastened thereby. In every case of sub-contracts, the prior approval of this office will be required. After approval of a sub-contract by this office has been sent to the Constructing Quartermaster, he shall give his written approval to the contractor, before the sub-contract is executed.

Wages:

31. Wages as determined by the Secretary of Labor under the Bacon-Davis Act will as set out in contract be paid on the project unless otherwise provided by the Contract.

Terms of the Contract:

32. The employees of the contractor, such as assistant [fol. 96] superintendents, foremen, etc., shall be subject to the approval of the Constructing Quartermaster on each project.

33. The contractor shall not attempt to secure labor at the expense of other government work. See letter OQMG—File QM 230.14 CNL, dated July 25, 1940.

Guard:

34. A military unit may be sent to the site for guard duty by the using service. The guard will be disposed of by the Commanding Officer of Troops as requested by the Constructing Quartermaster in accordance with the necessities as indicated by him. In cases where circumstances prevent the assignment of a military unit for guard duty, the Constructing Quartermaster will arrange for civilian proper guards. Barracks or any other suitable buildings that have been constructed may be used for housing the guard.

Hospital and Medical Services:

35. The contractor must provide hospital and medical services for his forces, and must comply with sanitary regulations prescribed by the Constructing Quartermaster.

Temporary Buildings:

36. Temporary buildings as needed may be constructed in accordance with appropriate mobilization or other plans by the contractor for warehousing of materials and for the housing of the Constructing Quartermasters, the Contractors, and the Finance Officer's office forces and for other purposes. Such buildings will be constructed and located in a manner making it possible for the Government to use them after they have served their purpose with the contractor.

37. Temporary housing for workmen, unless covered by the contract, will require prior approval of this office. Portions of the permanent buildings when available may be used for temporary offices by the Constructing Quartermaster. When permanent buildings are vacated, they shall be thoroughly cleansed and fumigated under the direction of a medical officer. Telephone service for Constructing Quartermasters will be secured in accordance with the provisions of Par. 13—AR 5-200.

Progress Reports:

38. Progress reports, together with ideal charts and photographs, will be furnished as called for in the guide for [fol. 97] C. Q. M.'s and by the Chiefs of Sections.

Completion Reports:

39. Completion reports as required by AR 30-1435 will be furnished at the completion of project by Constructing Quartermaster. The preparation of data for this report should be started with the beginning of the project.

40. Accurate and detailed records of all underground utilities will be maintained as the work progresses and will be kept up to date. Copies will be furnished the Post Quartermaster as well as this office as work is completed.

41. Whenever necessary to expedite the accomplishment of the defense program, purchasing officers may resort to

the execution of negotiated lump sum contracts or negotiated cost-plus-fixed-fee contracts only upon the specific authority of this office, and in accordance with the specific instructions of this office concerning the method of negotiation to be followed.

Auditing:

42. The Field Auditor is in charge of the auditing in connection with all Government construction which is under the supervision of the Constructing Quartermaster and he reports and is responsible directly to the Constructing Quartermaster. It is his duty to aid and assist the Constructing Quartermaster in seeing that the provisions of the contract are carried out and carefully to substantiate all transactions connected with the expenditure of the Government moneys in auditing procedure.

43. Matters not specifically covered herein may be found in Q. M. G. Publications, W. D. Circulars, W. D. Procurement Circulars, Finance Circulars and Army Regulations. However, in case of doubt this office should be consulted in order to determine the proper procedure.

44. The Field Auditor should bear in mind that the contractor must be reimbursed promptly for expenditures made by him and that every department of the organization must be running smoothly in order that this may be accomplished. His duty in this respect is active and not passive, and if the contractor's organization does not forward documents to him with sufficient promptness, he should take steps to bring this about.

45. He must remember at all times that the Government's accounting regulations and requirements as to auditing, are [fol. 98] far more rigid than those of commercial organizations. He must impress upon every member of his staff that their discretionary powers are limited by the stipulations of the contract and the regulations of the Field Auditor's Manual.

46. It is of utmost importance that all records be kept at all times abreast with the work. The Field Auditor is not merely keeping a set of records, but his work consists of maintaining a continuous pre-audit kept up from minute to minute. Each day all matters pertaining to the preced-